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**A TREATISE**  
**ON**  
**INDIAN INCOME-TAX LAW & ACCOUNTS**

BY  
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WITH FOREWORD BY  
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To  
The Sacred Memory  
of  
My Father  
Dwarkanath Dasgupta  
and  
As a Token of Affection  
for  
My Mother

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## PREFACE

The literature on Indian Income-tax Law is rather meagre considering the growing importance of the subject. In the present work an attempt is made to discuss the Income-tax Law as it is; to analyse its Sections into their essential elements; to concentrate particularly on those Sections which require clearer elucidation; to show its applications to concrete cases and its implications in relation to accounting, indicating some of the points where changes in the law seem desirable. My own professional experience has convinced me that the Income-tax Law cannot be fully comprehended unless it is studied in relation to accounts. A treatment of the subject on these lines will throw light on both.

As the Income-tax Law will undergo amendments, I have thought it fit not to include in this book exhaustive citations of the numerous case decisions and departmental Rules and Instructions contained in the official Income-tax Manual. It has, however, included all the typical cases. A fuller treatment must await the actual amendment of the Act.

To write a Treatise on Income-tax Law, the problems presented in its practical working and its bearing upon accounts is a difficult undertaking for a person outside the Income-tax Department. But perhaps, for this very reason, the work brings to its treatment a more detached outlook, a frank criticism and an unbiassed interpretation in terms of accounts, and of the law, the administration of which is sometimes associated with acute controversies.

I regret that it was not possible for me to utilise the seventh edition of the Income-tax Manual which has been published just when my Treatise has already been in print.

## PREFACE

I shall feel my labour amply rewarded if the work helps towards a sound understanding of the law and appreciation of its problems and also the lines on which the coming legislation should be framed, (Appendix C). I need hardly add that the recent Experts' Report has received in this book due consideration on its most important recommendations.

I have every hope that assessees in general and lawyers, accountants and business-men in particular will find the Treatise useful. Appendix B has been prepared for purposes of ready reference for all assessees.

My acknowledgments to various authorities have been duly made in the body of the book. I have also consulted with profit the Income-tax Law Reports and Digests written by Messrs. P. R. Srinivasan, A. N. Aiyar and B. R. Jain.

The Hon'ble the Law Member of the Government of India, Sir N. N. Sircar, K.C.S.I., has very much encouraged me and placed me under a deep debt of gratitude by the valued Foreword which he has been pleased to write in the midst of his many engagements.

New Civil Lines, Lucknow,  
*20th February, 1938.*

B. N. DAS GUPTA.

## FOREWORD

Mr. B. N. Das Gupta's Treatise on Income-tax Law is a very useful addition to the publications on this subject. It is a welcome departure from the stereotyped handling of the subject, as the author has endeavoured with success to elucidate provisions of law by applying them to concrete cases and by showing their implications in accounting. Very few people outside the Income-tax Department are competent to handle the practical working of Income-tax Law, and the author deserves congratulations for his success in this difficult task.

New Delhi,  
21st March, 1938.

N. N. SIRCAR  
*Law Member,*  
*Government of India.*



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**A TREATISE**  
**ON**  
**INDIAN INCOME-TAX LAW AND ACCOUNTS**

**Meaning of Income.**

Income-tax, as indicated by the term itself, is a tax on income as distinct from Capital. In many instances, it is particularly difficult to distinguish between income and Capital. The line of demarcation is often very faint. A clear grasp of the distinction depends on a study of the case-laws and principles of Accountancy. The following cases will illustrate the point :—

- (1) X takes a loan from Y. X not being able to pay interest for a number of years gives Y a promissory note. Does the promote represent capital or income?
- (2) X takes a loan from Y. X not being able to pay interest and capital transfers a portion of his estate to Y and in return accepts an annuity for life. Does this annuity represent income or capital?
- (3) A (whose business is not purchase and sale of land) sells some of his lands and gets more than his purchase price. Is this profit income or capital?
- (4) X and Y are rivals in a trade. They enter into an agreement for a particular number of years. Later on Y terminates the agreement and pays X a compensation. Is this compensation income or capital?
- (5) X is an agent of Y for a term of years. According to agreement Y pays X a sum of money as Y brings the agreement to an end prema-

- turely. Is this sum paid to X due to the loss of agency income or capital?
- (6) X invests in sterling securities. Interest on securities accrues but before bringing the income into British India he purchases a machinery in U. K. with the money and then brings the machinery into India. Does this represent income or capital?
- (7) A Company makes a profit and the Company distributes the profits in the form of Debentures. In the hands of the shareholders are the profits so distributed income or capital?
- (8) A sells his copyright or patent and gets a lump sum or a periodical payment of royalty. Is this receipt income or capital?
- (9) A sends an essay in a competition and gets a reward of Rs. 5000. Is this income or capital?
- (10) A who by profession is a doctor gives friendly help to a Company to sell shares to the public. The Company out of gratitude makes a payment of Rs. 3000 to A. Is this income or capital?
- (11) A who does not belong to the Police Department traces an absconder and gets a reward of Rs. 5000. Is this income or capital?
- (12) A Government servant retires. By commuting his pension he gets Rs. 20,000. Is this income or capital?

Income for the purposes of a business and its owner is ascertained by Profit and Loss Account but that is not necessarily the income for income-tax purposes. From the point of view of income-tax, income is determined by the statutes of the Income-tax Act together with its amendments from time to time.

The Act does not define income nor does it state precisely what it is. Whether it is possible to define it or not, it must be admitted that for purposes of taxation the term should have the widest application. The three expressions "income," "profit" and "gain" should be construed accordingly. From the fact that these three expressions occur together in the Act, the word "income" need not necessarily be taken to mean something pertaining to profits or gains. Profits and gains cover a more distinct ground and income should cover the rest. In Shaw Wallace's Judgment income has been stated to mean "a periodical monetary return coming in with some sort of regularity from definite sources." By accepting this definition probably the entire ground can be covered by the expressions "income," "profits" and "gains." In spite of all this, the fact remains that the entire Act is the definition of the word "Income" in Income-Tax.

#### Section 1. Jurisdiction.

The Act extends to:—

- (1) British India including British Beluchistan and the Sonthal Parganas,
- \* (2) Native States to the limited extent, *viz.*, to British subjects, in the Native States, who are the employees of
  - (a) Government of India,
  - (b) local authority in British India established in the exercise of the powers of the Governor-General-in-Council,
- \* (3) Native States to the limited extent, *viz.*, to all servants (British subject or non-British subject) of His Majesty in the Native States.

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\* Nos. (2) and (3) show that almost the same thing has been repeated twice. Again, the intention has not been fully carried out in this section. The entire scope should be brought into it.

While the Act extends to British India, British Beluchistan, Sonthal Parganas and to the Native States to a limited extent, it does not follow that this is the entire scope and that a person outside these places is under no circumstances taxable. The fact is that a person outside these places may also be taxable but under certain conditions as detailed in section 4(1) and (2), section 7(2), section 11(3), section 42.

**British India:—**

The General Clauses Act defines British India as “ All territories and places within Her Majesty’s dominions which are, for the time being governed by Her Majesty through the Governor-General of India or through any Governor or other officer subordinate to the Governor-General of India.”

**Note:—**

(1) Native States, (2) lands ceded by Native States to British Government for particular purposes but on which their own rights are retained (*e.g.*, for railway stations, cantonments, etc.) are not British India.

**British subject:—**

British Nationality and Status of Aliens Act provides that a British subject is “ a person who is a natural born British subject, or a person to whom a certificate of naturalisation has been granted or a person who has become a subject of His Majesty by reason of any annexation of territory.”

**The Scope of the Act:—**

- (1) Incomes that accrue or arise in British India will be taxed (resident or non-resident). 4(1)
- (2) Incomes that accrue or arise in British India through business connection in India to a

person residing out of British India will be taxed. (42)

- (3) (a) Incomes that accrue or arise outside British India to a resident in British India so long as it is not remitted to British India will not be taxed.

A man residing in Bombay having business in Mysore, Singapore, Nepal, London, etc., is not liable to tax on profits earned in those places.

- (b) He will be taxed to the extent that income is brought into British India.

A man residing in Bombay having business in Mysore, Singapore, Nepal, London, etc., brings into British India a portion of the profits accrued there. This amount is taxable.

That this remittance into British India relates to capital and not to profits should be proved by the assessee. A remittance may be constructive also (*i.e.*, a book adjustment or a set-off may have been made in the accounts). 4(2)

- (c) Foreign profits or income to a non-resident remitted to British India will not be taxed. 4(2)

An Indore State Engineer is sent by the State to repair its ghats in Benares. He is not taxable.

- (4) A resident in British India carrying on agriculture in a Native State where he pays land revenue to the Native State brings his agricultural produce into British India and sells

them in British India. Such income is taxable.

If he had brought into British India agricultural income (as distinct from agricultural produce) such income would not be taxed. 4(2) Proviso

- (5) A subject of a Native State serving the Government (Indian) within British India will be taxed. (1)
- (6) A subject of a Native State serving the Government (Indian) in a Native State will be taxed. (1)

(In such a case he may be taxed by the State as well.)

- (7) Salaries of employees (British or non-British subject) of the Government or of a local authority in British India working in a Native State will be taxed. 7(2)

Post Office employees in Mysore or Railway employees of, say, Bhopal Railway Station.

- (8) A Government servant lent to a Native State for service of that State is not liable to tax so long as he is paid by the State.

A Government employee is sometimes lent to a Native State and is paid by the State but he remains a Government servant for pensions, etc.

- (9) Professional fees received in a Native State by a person ordinarily resident in British India are taxed. 11(3)

## Section 2.

Agricultural Income means :—

- (a) any rent or revenue derived from land which is used for agricultural purposes, and is either

assessed to land revenue in British India or subject to a local rate assessed and collected by officers of Government as such;

- (b) any income derived from such land by—
- (i) agriculture, or
  - (ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or
  - (iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-clause (ii);
- (c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any operation mentioned in sub-clauses (ii) and (iii) of clause (b) is carried on:

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver of the rent-in-kind, by reason of his connection with the land, requires as a dwelling-house, or as a storehouse, or other out-building.

**Note:—**

- (1) Agricultural income is exempt from the tax.
- (2) If the land is in a Native State in India, exemption applies to that income which arises in Native States out of agriculture provided annual payment is made to the -

State in respect of that land and provided the income is received in British India.

(3) "Local rate" may include "irrigation rates" paid to Government. (Malik Umar Hayat Khan's Case.)

(4) There is no definition of 'Agriculture' in the Act. The term should be interpreted in the light of what has been stated in the judgments.

Agriculture has been stated by Justice Bhashyam Aiyangar to mean "cultivation of the ground for the purpose of procuring vegetables and fruits for the use of man and beast including gardening or horticulture and the raising or feeding of cattle and other stock . . . ."

Agriculture has been stated by Justice Sadasiva Ayyar to mean "the raising of annual or periodical grain crops through the operation of ploughing, sowing, etc."

Agriculture has been stated by Justice Spencer to mean "the raising of useful or valuable products which derive nutriment from the soil with the aid of human skill and labour and thus it will include horticulture, arboriculture and silviculture in all cases where the growth of trees is effected by the expenditure of human care and attention in such operation as those of ploughing, sowing, planting, pruning, manuring, watering, protecting, etc. . . ."

Agriculture should not only mean vegetables, sugarcane, fruits, cereals, paddy, etc., being food for man and beast but it should also include flower, indigo, tea, cotton, jute, flax, tobacco, dairy, poultry, rearing of livestock, etc.

*Rule 23.* (1) In the case of income derived in part from agriculture and in part from business an assessee shall be entitled to deduct from such income the market value of any agricultural produce raised by him or received by him as rent-in-kind which he has utilized as raw



material for the purposes of his business or the sale-receipts of which are included in the accounts of his business. The balance of such income shall be deemed to be income derived from the business and no further deduction shall be made therefrom in respect of any expenditure incurred by the assessee as a cultivator or receiver of rent-in-kind.

(2) For the purposes of sub-rule (1) "market value" shall be deemed to be:—

(a) where agricultural produce is originally sold in the market in its raw state, or after application to it of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render it fit to be taken to market, the value calculated according to the average price at which it has been so sold during the year previous to that in which the assessment is made.

(b) where agricultural produce is not ordinarily sold in the market in its raw state, the aggregate of—

- (1) the expenses of cultivation;
- (2) the land revenue or rent paid for the area in which it was grown; and
- (3) such amount as the Income-tax Officer finds, having regard to all the circumstances in each case, to represent a reasonable rate of profit on the sale of the produce in question as agricultural produce. (I.T.M.)

**Cotton**—It is agricultural income but profits from cotton produced on assessee's own land but marketed after ginning in a ginning factory is taxable—ginning not being essential to render cotton to be "fit to be taken to market." (Seth Sheo Lal Ramlal, 1932, Nagpur.)

**Quarry**—Where a land assessed to land revenue is worked as quarry, the profits derived from quarries were not agricultural income, hence taxable. (*Shib Lal Ganga Ram v. C.I.T., U.P., 1927.*)

**Fishery**—Profits are not agricultural income.

**Coal, mica, etc.**—Profits are not agricultural income.

**Pasturage**—Receipts are agricultural income.

**Market**—Profits are not agricultural income.

**Dairy and Poultry**—There are many incomes which are on the borderline between agricultural and non-agricultural incomes. Dairy and Poultry incomes are instances to the point. They are not agricultural incomes if they are in the urban areas, but if the income is derived from land assessed to land revenue etc., they should be agricultural incomes and exempt from the tax.

**Silk, Jute and Rubber** are agricultural incomes but where they are considered on the borderline it will be a question of fact as to how much should be taxed.

**Gur and Brown Sugar-making** are agricultural income, but not sugar-refining.

**Milling of paddy** is not agricultural income.

**Land under lease**—The land need not be cultivated by the owner himself. Income from leased land would be income from agriculture both to the lessor and to the lessee and to all the intermediary tenure-holders.

**Salt from sea water**—Income from it is not agricultural income. (*Linga Reddi v. C.I.T., Madras.*)

**Flower garden**—The owner has a shop in the Calcutta flower market. His profits are not taxable.

**Mango garden**—The owner sells it out on yearly lease. Profits are not taxable.

**Lac**—Grower's profits from sale of lac are not taxable but when lac is converted into other products they are taxable.

**Forest income**—"If a landowner grows on his own land which is assessed to land revenue forests or trees and derives income therefrom he is not liable to income-tax on such income. Persons, however, who take contracts in forests for the cutting down and selling of timber are liable to tax." (I.T.M.)

**Toddy**—Income derived from toddy is agricultural income to the person who has produced the trees from which toddy is tapped.

**Tea**—The planting of tea bush and collection of leaves will be agricultural income but manufacture of tea as a marketable commodity from the leaves is taxable.

**Private canals**—Whether income is in cash or in kind by sale of this water, the income is taxable. (Sir Umar Hayat Khan *v.* C.I.T., Punjab.)

**Royalty** received for granting permission to manufacture bricks is taxable (not agricultural income).

**Royalty** received for granting permission to take out *kankar* from assessee's land is taxable (not agricultural income). (Maharani Janki Kunwar *v.* C.I.T., Bihar.)

**Interest on cash loans** repayable in paddy is not agricultural income. (Hajee Cassim *v.* C.I.T., Burma.)

**Mortgage**—Interest received by a simple mortgagee of agricultural land is not agricultural income—hence taxable.

**Usufructuary mortgage**—Transfer of Property Act defines it as follows: "Where the mortgagor delivers possession or expressly or by implication binds himself

to deliver possession of the mortgaged property to the mortgagee and authorises him to retain such possession until payment of the mortgage money and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest or in payment of mortgage money or partly in lieu of interest or partly in lieu of mortgage money, the transaction is called usufructuary mortgage."

(1) In case of pure usufructuary mortgage the money received by the mortgagee is agricultural income.

(2) In the case where the assessee carried on money-lending business and took usufructuary mortgage of lands and then immediately leased back to the mortgagor stipulating some fixed annual payments these annual payments were decided to be agricultural income. (*Mukand Sarup v. C.I.T., U.P., 1928.*)

(3) Whether a mortgage is usufructuary or not will depend upon the Deed. (*Rajniti Prasad Singh v. C.I.T., Bihar, 1930.*)

(4) Assessee carrying on money-lending business makes an income of rent which he obtained from property under mortgage (usufructuary) and which he appropriated towards interest. It was decided that the rent was agricultural income though it was appropriated towards interest and hence not assessable. (*Hajee Mohammad Sadak Khoyee v. C.I.T., Madras, 1935.*)

(5) Assessee carrying on money-lending business makes an income of rent from property taken on usufructuary mortgage. The Patna High Court decided that the amount in question was agricultural income. On appeal to the Privy Council by the Commissioner, Privy Council confirmed the decision of the High Court. The question is thus set at rest. (*C.I.T., Bihar v. Sir Kameshwar Singh, 1935.*)

The following do not come under "agricultural income;" and therefore taxable:—

- (1) Illegal abwabs.
- (2) Fees received from land used for storing purchase of crops (paiali). (Raja Probhat Barua's case.)
- (3) Punyaha nazar or nazar or nazar salami paid by tenants of agricultural holdings at the beginning of the zamindari year. (Raja Probhat Barua's case.)
- (4) Nazar for petitions presented to the Zamindars dealing with questions of successions, settlement and partition. (Raja Probhat Ch. Barua *v.* King Emperor, 1930.)

The question of transfer is different. In the case, *Birendra Kishore Manikya v. Secretary of State*, the Calcutta High Court held that the premium paid for the settlement of waste lands or abandoned holdings would be regarded as "Rent or Revenue" derived from land and therefore exempt from taxation; the Calcutta High Court held in this very case that salami or premium paid to a landholder for recognition of a transfer of a holding from one tenant to another would not be exempt from taxation. This view in respect of salami was however overruled by a Full Bench of the High Court of Bengal (*Mehar Bano Khanum's case*). Therefore now such salami is not taxable.

#### **Sugar industry:—**

In the matter of *Bhikanpur Sugar Concern (Bihar, 1919)* the Company used to grow sugarcane crop on its own land and also manufactured sugar in an up-to-date factory—the agricultural and manufacturing sections being independent of each other. The Patna High Court held that the

Company was not a cultivator and the income was not agricultural income within the meaning of section 2(1) (b) (ii) of the Act. This case was decided in 1919 on the basis of the Income Tax Act of 1918. Subsequent to this, in Killing Valley Tea Co.'s case the Calcutta High Court for the first time indicated a taxable and non-taxable percentage.

#### Tea industry:—

In *Killing Valley Tea Co. Ltd. v. Secretary of State* (Cal., 1921), it was decided by the Calcutta High Court that when tea is grown and manufactured in British India a portion of the profits and gains derived from its sale in British India must be regarded as "agricultural income." Sir Ashutosh Mukherjee, Ag. C.J., observed "Bearing all these principles in mind, we hold that the Company must be taxed to the limited extent indicated because they come within the letter of the law to that extent. As the contentions of both sides have succeeded only in part we make no order as to costs . . ."

— Tea Companies ordinarily hold their lands under tea grant leases, not under common cultivating leases and are assessed to road cess not as ordinary cultivator but under the special provision found in section 33 of the Cess Act of 1880.

Government as a matter of fact refrained until 1919 from assessing the profits of tea gardens to income-tax.

As a result of the observations of the Calcutta High Court the Government fixed a percentage (now 40 per cent) of the income on which tax is imposed.

It seems that in 1919 the Government already notified that tea gardens could be taxed—immediately after came the decision of the Calcutta High Court quoted above.

In Mohanpura Tea Co.'s case (1937), the Calcutta High Court held that in the case of tea grown in a native state and sold in British India, the entire income was assessable in British India. The Calcutta High Court observed in a previous case (Port Said Salt Association Ltd.) that "profit is not realised before price and when the article is sold the whole profit is realised for the first time and it accrues where it is thus realised." Basing on this interpretation of "accrual," the judges in the Mohanpura Tea Co.'s case decided that the income accrued in British India and therefore section 4(1) applied and that section 4(2) could not be applied and also decided that as section 4(2) could not be applied the second proviso could not come into operation.

From this judgment (read with the Act) the following points emerge as condition precedent to the application of second proviso to section 4(2) :—

- (1) It must be income from agriculture.
- (2) It must arise or accrue in a State in India from land for which any annual payment in money or in kind is made to the State.
- (3) That the incomes from agriculture must assume their form as such (*viz.*, must become income as a result of sale) outside British India and thereafter brought into British India.

In other words, manufactured tea (as distinct from money arising out of its sale) entering British India will exclude the operation of the second proviso.

In *Mathias v. C.I.T.*, Madras (1937), assessee owns coffee plantations in Mysore, and is a resident of British India (Mangalore), and has offices in Mysore and in Mangalore. Produce was brought to Mangalore in raw state, and was sold in Mangalore.

The Commissioner decided that income accrued in British India. The Madras High Court decided that the assessee was entitled to claim the benefit of second proviso to section 4(2).

*Comparison of the two cases.*

| Calcutta High Court<br>(Mohanpura)   | Madras High Court<br>(Mathias)                     |
|--|--|
| (1) Tea grown in Native State.   | (1) Coffee grown in Native State.                  |
| (2) Tea sold in British India.   | (2) Coffee sold in British India.                  |
| Hence produce arises in Native State and income arises in British India (when sold). | Hence produce is received in kind in Native State. |
| Hence (a) section 4(1) applies.  | Hence income arises in Native State.               |
| (b) Sec. 4(2) second proviso does not apply.   | Hence section 4(2) second proviso does apply.      |
| (because income has not arisen in Native State).                                     | Therefore <i>Income exempt.</i>                    |
| Therefore <i>Income not exempt.</i>  |  |

**History of taxation of agricultural income.**

“ To stabilise the finances after the sepoy mutiny, the Income Tax Act of 1860 was passed which did not exempt the agricultural income from the permanently settled estates. The Act lasted for five years. In 1869 it was revived and was in force up to 1873. In 1871 the first Road Cess Act was inaugurated in which agricultural income was assessed. In 1877, the Bengal Public Works Cess Act was imposed. In 1880, both the Cess Acts were consolidated under one Act. In 1878, a License Act was passed, as a counterpart of the cess, whereunder all persons carrying on trades, dealings and industries were to take out licenses and pay for the same. In 1886, the Income Tax Act was passed incorporating in it the principles of the License Tax and agricultural income was



exempted on the clear understanding that the lands of the permanently settled estates are already burdened with cess, an additional burden over and above the land revenue. The Cess Act deals with land: the Income Tax Act taps all other property; the cess is for agrarian population whose main occupation is agriculture: income-tax is for urban population whose main occupation is trade. In 1918, there was an attempt to include agricultural income in the Income Tax schedule but it proved abortive, in spite of persuasive attempts by Sir William Meyer, the Finance Member, and Sir George Lowndes, the Law Member. In Bengal, according to the pledge, income-tax on agricultural income can come in if the Road and Public Works cesses go out: both cannot remain on the Statute.

The income-tax on agricultural income, which was levied in 1860 and abandoned after a brief spell of years and which is recommended by the Taxation Enquiry Committee (1924-25), the Simon Commission (1929) and others and the local rates on profits from land in the shape of cesses which are in existence are supported on the strength of the fact that they do not contravene Regulation I of 1793."\*

The question of taxing agricultural income brings the matter of permanent settlement to the forefront. The defence of permanent settlement may be quoted from Mr. R. C. Dutt's *Economic History of British India*: "There may be some doubt as to the wisdom of Pitt's permanent settlement of the land tax in England; there can be no doubt as to that of Cornwallis's Permanent Settlement; in England the settlement benefited the landed classes only; in Bengal the settlement has benefited the whole agricultural community; the entire peasant population shares the benefit and is more prosperous and resource-

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\*Mr. Sachin Sen's *Studies in the Land Economics of Bengal*.

ful on account of his measure. In England the settlement limited the tax on one out of the many sources of national income; in Bengal it has afforded a protection to agriculture which is virtually the only means of the nation's subsistence. In England it precluded the State from drawing a large land tax to be spent in the country for the benefit of the nations; in Bengal it has precluded from increasing the annual economic drain of wealth out of the country. In England it saved the landlord class from added taxation; in Bengal it has saved the nation from fatal and disastrous famines."

Regarding taxation of agricultural income derived from permanently settled estates the Chief Justice Dawson Miller in *Maharajadhiraj of Darbhanga v. Commissioner of Income-tax* said: "It is argued that the effect of the imposition of income-tax is not to increase the revenue or rent so payable, but it is clear, I think, that the imposition of such a tax is in fact to increase the revenue under another name. The Jama permanently fixed at the date of the Settlement was calculated upon a percentage of the rents and profits at that time derived from the ownership of the land. Income-tax is based upon the same rents and profits as they now exist, and it is impossible in my opinion to escape from the conclusion that a tax, under whatever name, upon the same sources of income would increase the duty payable under the name of revenue and which, by the Permanent Settlement, it was agreed, should then be fixed for ever."

The critics of the permanent settlement hold that since permanent settlement came into force the landlords have enormously increased their income and as such this increase ought to have been shared by the Government. Such a criticism ignores the fundamental basis of assessment when by permanent settlement regulation, 90 per cent of the rental was fixed as land revenue. This fundamental

basis has been clearly put in the regulations of 1793 in the following words : “ The Governor-General-in-Council trusts that the proprietors of lands sensible of the benefits conferred upon them by the public assessment being fixed for ever will exert themselves in the cultivation of their lands under the certainty that they will enjoy exclusively the fruits of their own good management and industry and that no demand will ever be made upon them or their heirs as augmentation of the public assessment in consequence of the improvement of their respective estates.” How else to justify the computation of land revenue at 90 per cent of the rental except by the fact that for the first few decades tax will be almost equal to the income and later on this loss will be recouped when the income will continue to increase. Otherwise, is a tax of 14 annas in the rupee conceivable? Obviously explanation lies there.

#### **Land Revenue: rent or tax**

It is not necessary here to enter into the detailed consideration as to whether land revenue is a rent or tax. The Indian Taxation Enquiry Committee Report (1924-25) discussed it fully and states that “ The Committee are unanimously of opinion that under both Hindu and Mohamman rule the State never claimed the absolute or exclusive ownership of the land and definitely recognised the existence of private property in it ” in answer to the two questions, *viz.*,

- (1) Did the State claim exclusive proprietary right over land
  - (a) under Hindu Law?
  - (b) under Mohamman rule?
- (2) Did the British Government succeed to any such right?

The report further states that “ the Committee are unanimously of opinion that in the case of lands under

permanent settlement, the Government have now no proprietary right and that as regards Khas Mahal estates and waste lands outside the permanently settled areas, they have full proprietorship. On the question of their rights in relation to ryotwari and other temporarily settled tracts, the Committee are divided in opinion . . . . while, however, the Committee are not of one mind as to the possibility of arriving at an exact and general definition of the position of the landholder in a temporarily settled area, they are agreed that in the generality of cases Zamindars and ryots are respectively the possessors of the proprietary right subject to the payment of land revenue."

From the table given in Professor Radhakamal Mukerjee's *Land Problems of India*, the following figures have been obtained :

|                          | Incidence of land revenue per<br>cultivated acre |         |             |
|--------------------------|--|---------|-------------|
|                          | Rs. a. p.  |         |             |
| Bihar and Orissa :—      |  |         |             |
| Permanently settled area | ...  | 0 8 1   | (1921-22)   |
| Temporarily settled area | ...  | 1 0 6   |             |
| Bengal :—                |  |         |             |
| Permanently settled area | ...  | 1 4 8   | } (1922-23) |
| Temporarily settled area | ...  | 1 15 10 |             |
| United Provinces         | ...  | 1 13 4  | (1916-17)   |
| Punjab                   | ...  | 1 13 0  | (1923-24)   |
| Bombay                   | ...  | 1 12 7  | ( ,, )      |
| Central Provinces        | ...  | 1 4 5   | ( ,, )      |
| Madras                   | ...  | 2 8 9   | ( ,, )      |

The following figures are obtained from the U. P. Provincial Banking Enquiry Committee Report (1929-30) :

|           |       |                      |             |
|-----------|-------|----------------------|-------------|
| Jhansi    | Rs. 3 | being rent per acre. | (Statutory) |
| Gorakhpur | 5     | ,, ,, ,, ,,          | ( ,, )      |
| Lucknow   | 7     | ,, ,, ,, ,,          | ( ,, )      |

Mr. Sachin Sen in his book *Studies in Land Economics in Bengal* states that "in Bihar the average rent

per acre is Rs. 4. In Orissa, the average rent per acre is Rs. 2/8."

Again Mr. Sen states that "in 1793, the land revenue was fixed at 90 per cent of the rental and now the pitch of assessment is not more than 21 per cent of the rental."

From the above facts and figures together with the figures supplied in the table by the Indian Taxation Enquiry Committee Report (1924-25) in para 437 it can be safely taken that land revenue and Cess together range between 25 to 40 per cent on the rentals.

#### Landholders' position examined :

To appreciate fully the present relative position of the landholders in view of their increased income from rents we have to examine the total financial charges borne by—

- |   |          |
|---|----------|
| (1) Land income   | } Income |
| (2) Salary, Interest on Security,<br>Profession, Business, House Property |          |

Total charges on land income are (a) Land revenue or rent,  
(b) Cess.

Total charges on other incomes are (a) Income-tax, Sur-charge, (b) Super-tax.

Though it is difficult to come to any precise conclusion as to the exact incidence of land revenue and cess on land income in India still it can safely be said that in the various provinces the minimum incidence would range between 25 per cent to 40 per cent, *i.e.*, 4 annas to 6 annas in the rupee. It should be remembered that this charge has no reference to actual cash receipt or realisations and is at a flat rate on every landlord's income whether it is Rs. 5,000 or Rs. 25,000 or Rs. 50,000 or Rs. 1,000,000 or over, while in the cases of such incomes of persons other than landowners, the rate scales up from 6 pies to 26 pies

and a surcharge of  $1/12$  plus Super-tax beyond Rs. 30,000.

From the following illustrations :

- (1) Income Rs. 8000, Landholder pays Rs. 2000 to Rs. 3200.  
Income Rs. 8000, others pay, say, Rs. 400.
- (2) Income Rs. 20000, Landholder pays Rs. 5000 to Rs. 8000.  
Income Rs. 20000, others pay, say, Rs. 2200.
- (3) Income Rs. 100000, Landholder pays Rs. 25000 to Rs. 40000.  
Income Rs. 100000, others pay, say, Rs. 20000.

it is clear that in the cases of smaller incomes the disparity between the two impositions is indeed very large but as the incomes move upwards the disparity is narrowed down until in the cases of incomes over a lakh, the income-tax payable and the land revenue payable are close to each other.

Taking the cases of incomes below one lakh, it can therefore be safely held that the land income is subjected to much greater charge by way of land revenue and cess than the charge upon other incomes by way of income-tax, surcharge and super-tax. The landlords should regard the greater part of the excess charge as payments towards the right of enjoying the property for a long term of years or in perpetuity obtained from the State.

#### **Suggestion :**

Under these circumstances if an imposition of income-tax on agricultural income becomes a necessity for the sake of provincial revenue the solution undoubtedly lies in imposing an income-tax on agricultural income where it exceeds Rupees One Lakh. Only at this stage or a little earlier, a levy of income-tax in addition to land revenue and cess can be justified.

The question of taxing agricultural income is a very difficult one. On the one hand agricultural income is exempt from income-tax by the present Income Tax Act

and on the other hand by the Government of India Act, 1935, this item has been transferred to be a provincial subject for taxation. The Provincial Governments while taxing agricultural income will do well to considerably modify its present definition. Agricultural income under the present definition covers many subjects which can in no way be called either agriculture or horticulture etc. The case decisions have exempted Zamindars' palaces and rents and interests arising out of usufructuary mortgage. The case of forest is admittedly a difficult question, still, the subject requires further consideration. It must also be admitted that where an organisation (limited company or otherwise) is for manufacture and industry (organisation not being agricultural) no exemption should be given on the ground that in the initial stages raw materials were agricultural produce. The tea, sugar, coffee industries and such other industries as derive income partly from cultivation and partly from manufacture are instances to the point. The exemption given at present to tea industry is not at all justified as it is an industrial venture pure and simple. A quotation from Taxation Enquiry Committee Report will be quite sufficient :

“ The case of the tea planter or other manufacturer who derives his income partly from cultivation and partly from manufacturing the produce so derived has been settled by an arbitrary rule. In view of the systems on which much of the land under plantation is held, it seems to the Committee that these assesseees may be deemed fortunate in securing the benefit of the exemption.”

Another important aspect which has to be taken into account in connection with this question of the assessment of the agricultural income is the possible extension of the agricultural industry to various subsidiary and allied fields for which the conditions appear to be favourable in India. There is now expected a development of new agricultural enterprises in the form of intensive scientific farming, orcharding, dairying, poultry farming and

general rearing of livestock. The growth of such new enterprises should not be retarded at the outset by taxation. **Suggested exemptions**, therefore, may proceed on the following lines :

(1) Income from agriculture, farming, etc., by cultivation of agricultural produce arising to the primary growers.

(2) Proceeds from growing trees or from orcharding, etc., if the owner is a whole-time man engaged principally in this agriculture.

(3) Proceeds from poultry farming and rearing of livestock, dairying if the owner is a whole-time man engaged principally in animal husbandry :

Provided that the proceeds from (1), (2) and (3) above received by any person other than the primary growers (namely, agriculturists, orchard owner, poultry owner, dairy owner, etc.) be deemed to be non-agricultural.

Provided further that the proceeds from (1), (2) and (3) will cease to be non-taxable from the first day of the owner's accounting year if their organisations are converted into a joint-stock company other than into a private limited company.

Provided further that not less than  $\frac{1}{3}$  of the total number of members constituting the private limited company must be principally engaged in that agricultural undertaking.

Provided further that a manufacturer will be debarred from claiming any exemption on any portion of the proceeds or profits in respect of agricultural commodities undergoing agricultural operations or processes at any earlier stage.

#### **Land under Permanent Settlement:—**

Income from *such* land which is used for agricultural purposes will come under section 4(3)(viii).



Income from *such* land which is not used for agricultural purposes is not exempt. (Privy Council in Probhat Barua's case, 1930.)

**The Calcutta High Court** held that Permanent Settlement Regulation of 1793 does not give any exemption from liability to income-tax. (Emperor *v.* Probhat Chandra Barua, 1924.)

**The Madras High Court** held that any income derived by a Zamindar from forests and fisheries in his zamindari held under a permanent settlement under Madras Regulations of 1802 was not liable to income-tax. (Zamindar of Singampatti, 1922.)

**The Patna High Court** held that income from jalkars, hat, etc., which were included in the assets on which permanent settlement was based were not liable to income-tax. (Maharaja of Darbhanga *v.* C.I.T., Bihar, 1924.)

**The Allahabad High Court** held that such income would be liable to income-tax as it has not been specially exempted by the Act. (Shib Lal Ganga Ram *v.* C.I.T., U. P., 1927.)

These conflicting decisions have been set at rest by the **Privy Council** in the Raja Probhat Chandra Barua's case (1930) The present position therefore is that on the ground of permanent settlement, no exemption from income-tax is allowed. Exemption is allowed only to agricultural income whether from permanently settled land or otherwise. There is a good deal of confusion in the public mind on this issue, but the fact remains that permanent settlement as such has nothing to do with the exemption of agricultural income as defined in the present Income Tax Act.

It may however be pointed out that sufficiently strong arguments can be advanced against the reasoning that led the Privy Council to this decision. It is well known that

there are many fisheries, markets and other incomes in permanently settled estates which may be regarded as doubly taxed today, firstly by the land revenue and then by the Income Tax Act.

In *Maharaja of Darbhanga v. C.I.T., Bihar, 1928*, it was held that the dwelling house of which the guest house was a part and parcel being required by the assessee as Zamindar, the exemption of the annual value of this guest house was allowed as agricultural income.

In *Rani Saltanat Begam v. C.I.T., U.P.*, the assessee, one of the widows of the Raja of Nanpara Estate in Oudh, was awarded a monthly maintenance allowance of Rs. 4,000 under a compromise of the court—this allowance formed a charge on the Estate. She claimed exemption as she claimed it as agricultural income. It was decided that maintenance allowance was not an agricultural income and therefore taxable.

In the case of *Rajendra Narayan Bhanga Deo v. C.I.T., Bihar*, the Raja of Kanika derived bulk of his income from agricultural rents. He had a palatial building for his residence extending over 40 square miles with quarters for zamindari staff and a guest house. The Income Tax Officer found out a proportionate valuation of the palace not required for agricultural purposes. It was decided that all these buildings, etc., were exempt under agricultural income.

In *Maharaja Darbhanga v. C.I.T., Bihar*, it was decided that where land was mortgaged and the mortgagee appropriated the income of the property in payment of interest on loan, this income received by the mortgagee was agricultural income.

In *Maharaj Kumar Gopal Saran v. C.I.T., Bihar, May, 1935*, Maharaj Kumar took a loan from Y and some time later transferred a portion of his estate towards payment of assessee's debts, a cash payment and an annuity to himself for his life. It was held by the Privy Council that the annuity was neither rent nor revenue derived from land and therefore did not come within agricultural income. It was decided that this was not a case in which the assessee had exchanged his estate for a capital sum payable in instalments. The annuity was taxable.

In *Lal Suresh Singh v. C.I.T., U.P., September, 1935*, Raja Avadhesh Singh of Kalakankar, the holder of an impartible estate in Oudh, and the elder brother of the assessee by an agreement, contracted to pay the assessee Rs. 600 p.m. for his lifetime in consideration of assessee's giving up all claims in the estate. The assessee contended that the allowance came under agricultural income. The Oudh Chief Court decided otherwise on the basis of the *Maharaj Kumar Gopal Saran's* case. *Had the assessee based his case on the decision in Maharaja Visweswar Singh of Darbhanga's (April, 1935) case, he would probably have succeeded on the ground that the allowance would come under "a receipt as a member of the Hindu undivided family."*

Some important definitions are given below :—

(1) “ Company ” means

- (i) companies as defined in the Indian Companies Act 1936,
- (ii) companies formed in pursuance of an Act of Parliament,
- (iii) companies formed by Royal Charter or Letters Patent,
- (iv) companies formed by an Act of the Legislature of a British possession,
- (v) any foreign association carrying on business in British India whether incorporated or not and whether its principal place of business is situated in British India or not, which the Central Board of Revenue may, by general or special order, declare to be company for the purposes of the Act.

**Note :—**

(a) This definition includes all companies constituted in the dominions of the Crown.

(b) A similar Companies Act in force in a Native State in India will not come under the definition.

(c) Central Board of Revenue may declare any organization as a “ company ” for the purposes of the Act.

(2) “ Firm,” “ Partner ” and “ Partnership ” have the same meaning respectively as in the Indian Partnership Act of 1932.

A partnership is the relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

(3) "Principal officer," used with reference to a local authority or a company or any other public body or any association, means—

(a) the secretary, treasurer, manager or agent of the authority, company, body or association, or

(b) any person connected with the authority, company, body or association upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof.

**Note:—**

"Manager" here has been used in wide sense and that liquidator should be treated as principal officer of the company. It is not necessary to take recourse to section 41 for holding liquidators liable. (Official Liquidator, Agra Spinning and Weaving Mills Co., Ltd. v. C.I.T., U.P.)

(4) "Total income" means total amount of income, profits and gains from all sources to which this Act applies computed in the manner laid down in section 16.

**Note:—**

(i) Total income is the total amount of assessable incomes from all sources.

(ii) The methods of arriving at the assessable incomes differ with different sources of income.

(iii) With regard to incomes from some sources there are no deductions and with regard to others there are deductions allowed before arriving at the assessable income.

(iv) "Total income" is a technical expression which determines liability of an assessee once for all and fixes rate.

(5) "Previous year" means:—

(a) the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have so been made up:

Provided that, if this option has once been exercised by the assessee, it shall not again be exercised so as to vary the meaning of the expression "previous year" as then applicable to such assessee except with the consent of the Income-tax Officer and upon such conditions as he may think fit; or

(b) in the case of any person, business or company, or class of person, business or company, such period as may be determined by the Central Board of Revenue or by such authority as the Board may authorise in this behalf.

**Note:—**

(i) Fiscal year—Income-tax year begins on 1st April and ends on 31st March.

(ii) For the purposes of 1938-39 assessment, "Previous year" will be:—

1st April, 1937 to 31st March, 1938

(iii) For the purposes of 1938-39 assessment, "Previous year" will be:—

1st January, 1937 to 31st December, 1937

(where the assessee closes his books every year on 31st December).

(iv) If an assessee closes his books on Ramnavami day or Akshoy Tritiya day or any other such date in every year, the dates will vary from year to year and the range of variation is wide, *e.g.*, Ramnavami may fall on any day between, say, 24th March to 19th April, Akshoy Tritiya may fall on any day between, say, 24th April to 16th May. In such cases only, the previous year will be allowed to overlap the assessment year, provided, of course, that the assessee had already declared to the Income-tax Officer that his accounting year would usually end on Ramnavami day or Akshoy Tritiya day or on any such day accepted by custom, religious or otherwise.

(v) While a margin of one month on either side of the accounting year has been allowed by the Act, the Central Board of Revenue may authorise acceptance of any previous year.

This is also the practice provided declaration from the assessee had already been obtained as to closing the accounts on any such particular day.

In the case *Messrs Nanakchand Fatehchand v. C.I.T., Punjab*, the assessee firm commenced business on 18th April, 1923. The Income-tax Officer required the firm to furnish a return of its income during the previous year. The firm instead of declaring its profits up to 31st March, 1924, for the assessment of 1924-25 submitted profits for full twelve months up to 17th April, 1924. The firm's contention was that it was not liable to tax as it was not in existence for a complete year before 1st April, 1924. The Income-tax authorities acting under 2(11)(b) of the Act accepted as the accounting period from 1st April, 1923, to 17th April, 1924. It was decided that the previous year determined by Commissioner was quite in order according to instructions of the Central Board of Revenue and the assessment was legal.

In *Abu Baker Abdul Rahman v. C.I.T., Bombay*, 1936, the assessee made up his accounts including income from property at Dewali on 9th November, 1931. He was a partner of the Movietone Company whose first year of existence ended on 31st December, 1931. In 1932-33 assessment the assessee did not include his income from Movietone Company as the assessee's previous year ended on 9th November, 1931. But the I.T.O. included Rs. 1,14,812 being profits from Movietone Company up to 31st December, 1931, and assessed him. It was decided by the High

Court that as the assessee had to make a return of his total income up to 9th November, 1931, he could not be required to include his movietone profits as that would mean adoption on the part of the assessee of two different previous years.

**Section 3. (Charging section for Income-tax)**

- (1) Who are taxed?
- (2) At what rate?
- (3) On what?

**Regarding (1)**

This section charges the following to income-tax:—

- (a) Individual,
- (b) Hindu undivided family,
- (c) Company,
- (d) Firm (registered or unregistered),
- (e) Other association of individual, *e.g.*, co-operative society, chamber of commerce, club.

**Regarding (2)**

The tax shall be charged at the rates applicable to the total income of the assessee in accordance with the provisions of the Finance Act in force for the year.

**Regarding (3)**

The tax shall be charged in respect of all incomes, profits and gains of the previous year.

**Note:—**

A company in liquidation is a company within section 3 above. (Official Liquidator, Agra Spinning and Weaving Mills Co., Ltd. *v.* C.I.T., U.P.)

**Basis of Indian and English Taxation Compared.**

The basis of the Indian taxation is—

- (1) that an assessee is liable to pay to the Government income-tax for any current year

- (2) on what accrued to him as income during the "previous year."

The basis of the English taxation is—

- (1) that an assessee is liable to pay to the Government income-tax for any current year,
- (2) on the income of that very year,
- (3) to be measured or computed by what accrued to him as income during the previous year.

The basis of Indian taxation as explained above raises a question, *viz.*—

If a source of income is absent in the year 1929-30 but existed in 1928-29, will the income be taxed in the assessment for 1929-30?

According to English law this income will not be included.

According to Indian law this income will be included.

Therefore it is clear that the existence or non-existence of the source of income in the year of assessment is immaterial. What is essential is the previous year's actual income; that income will be taxed. (*Tehri Garhwal Estate v. C.I.T., U.P., 1934; Behari Lal Mullick v. C.I.T., Bengal, 1927.*)

In the English case, *viz.*, *Van Den Bergh's case*, X and Y were rivals in a trade—they entered into an agreement and later, Y terminated the agreement and paid X a compensation.

The Commissioner decided it as income.

The High Court decided it as capital.

The Court of Appeal decided it as income.

The House of Lords decided it as capital.

In the *Imperial Chemical Industries (India), Ltd. (1935)*, it was decided that payments made "once and for all" by way of lump sum would be capital expenditure.

In the *Anglo-Persian Oil Company (India), Ltd. case*, the agency that received the lump sum as compensation for having lost its agency was taxed on this sum. The *Calcutta High Court* disallowed this assessment.



In the case of the Trustee of the Estate of Late Sir David Yule v. C.I.T., Bengal (1935), Sir David Yule left large accumulations of undistributed profits in the companies formed by him. This reserve was distributed as Bonus in the form of Debentures. It was held by the High Court and then by the Privy Council that the amount of bonus paid in the form of Debentures was not assessable.

If the undistributed profits of the companies could be deemed to have been distributed, the personal assessment would have yielded a very large revenue to the state. As the profits were distributed by way of (Bonus shares or) Debentures they were converted into Capital and could not be taxed.

If, however, bonus is given to shareholders in cash it is taxable.

#### **Experts' Report Criticised :**

The Report has recommended "Slab System" in place of the existing "Step System." By the suggested change, the first Rs. 1500, has been totally exempted from tax for everybody. The subsequent slices will bear graded (steeply graded) rates of tax. The exemption of the first Rs. 1500 is very desirable particularly because personal allowances as obtainable in England have not been recommended by the Committee. The Committee may regard this exemption a part of the Slab System only but because it stands by itself as a very equitable measure it should be accepted at once. With regard to the Slab System, the main objection is that the ability of a person to pay does not depend on the first slice or any particular slice but wholly depends on the total income of any person. It is the total income alone which determines what financial burden a man can bear. This contention will be further strengthened when it is pointed out that the economic value of the first, second or any slice of a poor man is quite different from the value of the corresponding slices of a rich man; still the rate of tax imposed by Slab System is

the same on both the rich man's slice and the poor man's slice. Marshall points out "the marginal utility of money is greater for the poor than the rich; . . . in other words, the richer a man becomes, the less is the marginal utility of money to him." To put this in more concrete form, the rich man has more slices to fall back upon than the poor or the man of moderate means and as the total number of slices in every case determines the relief to the ultimate burden of taxation, the number of slices or slabs is a determining factor to a man's ability to pay. Thus the same slab rates applicable to both the incomes of the rich and the poor cannot be a fair imposition.

It is, therefore, difficult to see much equity in the proposed slab system. The equity lies in the progressive rates as between the different slices of the same man's income; but this must not be confused with the ability of one man when compared with that of the other. The existing system, *viz.*, the "Total Income" basis has, in this particular respect, distinctly greater advantages. In these circumstances, the present system should continue.

Another defect of the present system pointed out by the Committee is the hardship due to sudden jump from one rate to another. This can be easily rectified by introducing a more elaborate "marginal relief" scheme, by reducing the steepness of the scale of rates and by creating more stages. The replacement of the existing method by an altogether new one will mean serious impairing of efficiency. The quickness and alertness due to experience gained by the department during the last twenty years will be ineffective and the uninterrupted progress of Income Tax case-laws will considerably suffer.

If it is the genuine intention to reduce the burden of taxation to the large middle-class population in India the attempt need not be made by such a round-about process but by straightaway reducing the rates which

alone can be appreciated by a tax-payer. The rates should be such and the assessment should be governed by such provisions and rules that a small Indian industry, trade or commerce struggling its existence through with a very meagre profit may find a portion of the burden of tax removed. In order to safeguard the interest of the State revenue, a set of concessional rules may be framed for such businesses as will produce to the I.T.O. audited accounts. This measure is likely to attract such businesses as are now adopting various devices in order to remain below the taxable stage though they are fully sensible of the risks involved. The idea of giving some privileges to one class of business organisations or denying certain privileges to another class is not absolutely new to the present Act for such an idea operates behind the rules which govern the unregistered firm. This suggestion will serve many purposes :

(1) A set of concessions will give sufficient advantage to the assesseees to give an impetus to produce audited accounts. This will substantially help the Income Tax Department in respect of time and trouble involved in tackling unsatisfactory accounts.

(2) Small Businesses will be on a much stronger foundation when the accounts will be scrutinised by auditors.

(3) It will create an occupation with wide field and give to many youths employment which has already become a matter of concern to the Government.

#### **Section 4 (1).** Assessee's domicile immaterial.

Income, profits or gains accruing or arising or received in British India, or *deemed* to accrue or arise or to be received in British India.

**Section 4 (2).** An instance of cases covered by the term *deemed* in section 4(1).

Income, profits and gains accruing or arising outside British India to a resident in British India to the extent that income is brought into British India is taxable in the year in which it is received.

The above section 4(2) may be illustrated by the following cases in which income is deemed to accrue or arise or to be received in British India :

(1) Incomes that accrue or arise outside British India (whether in a Native State or in a foreign country) to a resident in British India will *not* be taxed unless that income is brought into British India. 4(2)

(2) Salaries of employees (British subject or non-British subject) of the Government or of local authority in British India working in a Native State will be taxed. 7(2)

(3) Professional fees received outside British India but within India to a person ordinarily resident in British India are taxed. 11(3)

(4) Incomes that accrue or arise in British India, through business connection in British India to non-residents will be taxed. (42)

**Note:—**

Mere recording (of profits derived elsewhere out of British India) in the balance-sheet prepared in British India is not a case of profits “deemed to be received or brought into British India.”

In the matter of V.G. Every in the Calcutta High Court, Justice Panckridge observed:—“In my opinion, the words *accruing and arising* are very wide and I am in full agreement with those decisions of the Bombay High Court, which have laid it down that they mean something different from *being received*. This view receives support from the language of section 4(2) which specifically recognises that income, profits and gains may arise or accrue at one place and be received at another.”

“ Accrue or arise ” has the sense of *ownership* while “ received ” has the sense of *possession*.

In the Ahmedabad Advance Mills, Ltd., an income arose in England from sterling investments. This income was then utilized in purchasing some assets for the Bombay Company. When this machinery was brought to Bombay, the question naturally arose as to whether income to the extent of the value of the machinery is not income remitted to India and as such taxable. The Bombay High Court held that income was not brought but capital asset was brought to India and therefore not taxable.

In Subramanyan Chettier v. C.I.T. (Madras, 1935), Assessee had business both in Tinnevalley and Penang (outside British India). He contracted a debt in his Tinnevalley shop. In order to repay this debt he issued to his creditor ‘ hundis ’ on his Penang firm; the debt was thus discharged. It was decided that it was a case of constructive receipt as discharge of Tinnevalley debt amounted to a receipt in India by the Assessee of his gains outside British India.

In Saunders v. C.I.T. (U.P., 1932), Bishop of Lucknow was paid from a fund in U.K. and the allowance was payable only in U.K. The Allahabad High Court held that the income accrued in India.

In Sir T. Vijayaraghavacharya’s case (1936), he was paid in U.K. The Lahore High Court decided that “ pay, leave salary, pension paid outside India to persons residing in India ” was exempt from tax just as payment made to persons residing out of India. Therefore in this case income has been taken to arise at the place where payment to the assessee has been made—not where “ earned ” nor where the source is situated.

*Illustration :—*

A rupee company in India has some sterling investments in U.K. The dividends declared out of the rupee company profits were paid to U.K. shareholders from the interest on sterling securities. As the law now stands, because the income from sterling securities is not remitted to British India, it is not taxable, but is it not a clear case of constructive receipt and should not interest on sterling securities to the amount of dividends distributed in England be included in the total income of the rupee company and be taxed?

#### **Experts’ Report Criticised :**

The Report has recommended that in place of “ remittance basis,” “ Whole income basis ” should come into operation. It is true that “ whole income ” basis is in vogue in U.K. but apart from the argument that in that case allowance of foreign business losses have got to be

made with all their attendant difficulties and complications, on absolute grounds of equity and reason the "whole income" basis is not acceptable. The other objection to this recommendation is that Double Income-tax Relief question will become much more complicated. The income-tax machinery in India will have much greater task (not having sufficient control) without a corresponding revenue gain. The report points out that by the existing system

"encouragement is offered to investment abroad by wealthy persons who can afford to refrain from having the income remitted to British India. Not only is no tax payable on that part of the residents' income, but there are possibly adverse effects upon the supply of capital for Indian industry. There is no reason in equity why investment of money abroad, as contrasted with home investment, should be given immunity from taxation."

This argument apparently looks forceful, but on a close examination it will not be found so. Such a sterling investment escapes Indian taxation, but surely is charged to U.K. tax. English tax is greater and there is no reason why on the ground of taxation there should be a flight of capital from India to U.K. The present system has provided reasonable protection to Indian revenue by taxation of the amount remitted to India from abroad. This view is reasonable and there is no risk involved as the entire amount can be taxed then without any deduction for foreign losses.

#### **Section 4 (3).**

The Act does not apply to the following classes of income (both for Income-tax and Super-tax).

**Section 4 (3) (i).** Any income derived from property held under trust . . . . thereto.

This exempts two categories of income:—

- (a) Income from property which is dedicated absolutely.

- (b) In case of qualified dedication, so much of the income as is applied or finally set apart for application to religious or charitable purposes.

“ In the case of absolute dedication, *i.e.*, where there is no outstanding secular interest reserved by the trust, the exemption is complete. In the case of qualified dedication, the trust reserves a secular interest to beneficiaries, Shebaita or heirs of the founder, etc. *This secular interest is assessable to income-tax.* Suppose 60 per cent is under the trust applicable to religious or charitable purposes and 40 per cent distributable among the heirs of the settler. The 40 per cent is assessable. Suppose also that only 50 per cent is actually applied or set apart for religious or charitable purposes and the heirs of the Shebaita misappropriate 10 per cent. The 10 per cent is under the section also assessable.

The maintenance of a Shebaita may or may not come within the category of religious or charitable purpose. It depends on the circumstances of the case. If, for instance, a dedication is absolute and a small portion of the income is given to the Shebaita for his remuneration for carrying out the trusts of the endowment, it would not be secular. If, on the other hand, a fixed sum is given to religious or charitable purposes and the residue of the income is given to the Shebaita for his maintenance, the residue would be held to be secular.

The test is whether a suit for partition lies for division of the residue. If it does, then the residue is secular and assessable. In such case, any portion of the dedicated, *i.e.*, ordinarily exempted income which may be misappropriated would also be assessable.” (I.T.M.)

**Note:—**

- (1) It need not be a formal trust.
- (2) If the property is held under trust *wholly* for religious purposes, the Income-tax Officer has nothing to enquire as to how the income has been applied.

When held in part only, the fact that income has been “ finally set apart ” will be enough for Income-tax Officer.

- (3) Property in this section means securities, business and all other properties.

**Section 4(3) (ii).**

“Section 4(3) (ii) similarly exempts the income of religious or charitable institutions which is derived from voluntary contributions and is applicable solely to religious or charitable purposes.

To secure exemption under clause (i) or clause (ii) of section 4 (3) the income of religious or charitable institutions and income derived from property held for religious or charitable purposes need not be actually spent on religious or charitable purposes *in the year of receipt*. It is sufficient if it is set aside for those purposes. In the case of mixed trusts, the income-tax authorities are required to enquire into the application of the income. Where property is held in part only for religious or charitable purposes a proportionate share of any expenses incurred on management should be considered as applied to those purposes.” (I.T.M.)

**Note:—**

(1) Charitable purpose includes relief of the poor, education, medical relief and advancement of any other object of general public utility.

The following come under charities:—

University, Dharamsala, Poor feeding house, Dispensary, Hospital, School, etc.

(2) A hospital, school or college, etc., need not necessarily be charitable. Such things when proprietary will be taxed.

(3) An institution meant for professional examination is not charitable.

(4) Whether any organisation is charitable or not is a question of fact and intention.

(5) Mere benefit, benevolent or liberal purpose will not necessarily bring it within section 4(3). It must be



income from property held in trust. (*A. Eggar v. C.I.T., Burma, 1927.*)

(6) If a temple is made a member of a registered firm, the firm cannot claim exemption for the share of the temple because income is not derived from property held under trust. (*Lachman Das Narain Das, Cawnpore, 1925.*)

(7) The Musalman Wakf Validating Act of 1913 fully recognises wakf which is solely intended for maintenance of assessee and his children. But as the income was not devoted wholly to religious or charitable purposes it could not be income within section 4(3) (i). (*Umar Baksh v. C.I.T., Punjab, 1931.*)

(8) There should be

- (1) permanent dedication,
- (2) entire or substantial dedication,
- (3) definite part of the property should be dedicated.  
(*M.E.R., Malak v. C.I.T., C.P.*)

(9) The trustees of "Tribune" of Lahore contended that as the trust was created for public good, benevolent purpose and liberal policy the income was covered by "charitable purposes" and that they neither came under section 40 nor under section 41. The Lahore High Court decided that the income was taxable. It was held that (1) sections 40 and 41 do not exhaust the categories of trustees, (2) "the association of individuals" in section 3 includes trustees of all description and does not exclude them when the beneficiary is not a living person.

**Section 4 (3) (iii).** The income of local authorities.

"Local authority means a municipal committee, district board, body of port commissioners or other authority legally entitled to or entrusted by the Government with the control or management of a municipal or local fund."

Local authority includes harbour trust boards, improvement trusts, inland navigation boards, water boards, etc.

**Note:—**

All the income of these bodies from whatever source derived is exempt from taxation. All incomes whether from markets, tramway, railways, gas, electric, water, undertaking belonging to a local authority are exempt from taxation.

**Section 4(3) (iv).** Interest on securities which are held by or are the property of any Provident Fund to which the Provident Funds Act of 1897 (now Act XIX of 1925) applies.

**Note:—**

(1) Provident Funds are invested in Trustee securities (sec. 20 of the Indian Trust Act).

(2) These are Provident Funds of public servants or quasi-public servants, the constitution and control of which are regulated by Provident Funds Act and rules made thereunder.

(3) The Manager of the Court of Wards is a Government servant for the purpose of the Provident Funds Act. (*J. E. Rutherford v. C.I.T., Bihar, 1931.*)

**Section 4(3) (v).** Any capital sum received—

- (a) in commutation of pension, or
- (b) in the nature of consolidated compensation for death, etc.,
- (c) in payment of insurance policy, or
- (d) as the accumulated balance or at the credit of a subscriber to any such fund.

**Note:—**

- (1) Pension monthly received is taxable.
- (2) Commuted pension exempt from tax.
- (3) Lump sum gratuities in lieu of pension are taxable.
- (4) Gratuities received by railway servants exempt (section 60).
- (5) Accumulated balance includes not only contributions and subscriptions but also interest thereon.

**Section 4(3) (vi).** Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit.

**Note:—**

(1) Perquisite means “ any casual emolument, fee or profit attached to an office or position in addition to salary or wages.”

(2) Perquisite is taxable like salary, but the above “ special allowance, benefit, perquisite, etc.” are exempt if the two following conditions are satisfied :

- (a) The allowance must be specifically granted to meet the extra expense thus caused to the employee and that extra expense only.
- (b) The expense incurred by the employee must be wholly and necessarily incurred in the performance of his duties as an employee.

It is thus a question of fact in each case whether house rent allowance or the value of rent-free quarters is exempt from the tax, but the following examples will show the lines on which decision should be made :

(a) A currency officer is granted rent-free quarters in his currency office. He will be liable to tax on the value of his rent-free quarters.

(b) A Government office has its headquarters in Bombay, but proceeds for some months in the year elsewhere and grants its ministerial establishment house rent allowances or rent-free quarters in the place to which it proceeds with the specific object of providing for the maintenance of the second. The allowance or value of rent-free quarters will be exempt.

(c) In all cases where rent-free houses form part of the perquisites of an employee, the cash value of such a house to the occupier need not ordinarily be deemed to be more than 10 per cent of the salary of the employee.

(d) The "Delhi moving allowance" and "Delhi camp allowance" are exempt.

(e) Officers and other ranks of the Army in India (British and Indian) are exempt from tax so far as the following allowances are concerned:—

Messing, syce, forage, meal money and clothing allowance, outfit allowance, horse allowance, tentage, travelling, etc.

### Section 4(3) (vii). Casual gains :

Any receipts not being receipts arising from business or the exercise of a profession, vocation or occupation, which are of a casual and non-recurring nature, or are not by way of addition to the remuneration of an employee.

The following two conditions must be satisfied before any income or profits can be exempted as *casual* :

- (1) they must not be the proceeds of a profession, vocation or employment, or arise from business, that is, from "any venture or concern in the nature of trade, commerce or manufacture," and
- (2) they must not be annual.

Both these conditions must be fulfilled. The exemption also is specifically not to apply to any gratuity to an employee for services rendered so as to avoid the possibility of any ambiguity in connection with the use of the word "gratuity" in section 7(1). The following are illustrations of the effect of the provisions of section 4(3) (vii) :

(1) A purchases a house with a view to re-selling it at a profit. His profits from the transaction are liable to income-tax (even although it be an isolated transaction). B purchases a house for his own residence and later on sells it at a profit. His profit is not liable to the tax.

(2) A wins a prize in a lottery or a bet on the race-course. His receipts therefrom are taxable. B is a bookmaker. His profits from betting are taxable.

(3) A is a professional beggar. His receipts from mendicancy are not exempted from the tax by this sub-section.

(4) A makes a practice of speculating in the purchase and sale of shares. His profits therefrom are liable to the tax. B purchases Indian War Loan 1929—1947 at 95 redeemable at par. The premium received on redemption after a period of years is not liable to the tax. On the other hand the yield from Treasury Bills arising from their issue at a discount and repayment at par after 12 months or some shorter period is liable to the tax under section 12, though as this yield is not interest, the tax is not deducted at the source under section 18(3).

(5) A man writes a book. His receipts from its sale are taxable.

(6) Lump sum legacies are exempt; annuities granted under a will are not exempt." (I.T.M.)

### Section 4(3) (viii). Agricultural income.

This has been discussed on page 6.

### Section 4(3) (ix). Any income received by trustees on behalf of a recognised Provident Fund.

Note:—

(1) Definition of "Recognised Provident Fund" is given in section 58A, etc.

### Section 5.

Income-tax authorities are the following:—

- (1) Central Board of Revenue.
- (2) Commissioners of Income-tax.
- (3) Assistant Commissioners of Income-tax.
- (4) Income-tax Officers.

(1) Central Board of Revenue is appointed by the Governor-General-in-Council. This Board frames rules and instructions in interpretation of the provisions of the Act.

(2) Commissioner of Income-tax is the head of the Income-tax Department in a province. He is appointed by the Governor-General-in-Council.

(3) Assistant Commissioners and Income-tax Officers are appointed and dismissed by the Commissioner. In this respect, however, he is subject to the control of the Governor-General-in-Council, who exercises this control through the Governor-in-Council.

Assistant Commissioners and Income-tax Officers have right of appeal to Governor-General-in-Council.

(4) Assistant Commissioner's main duty is to hear appeals. They also supervise the work of the Income-tax Officers. Now in some provinces their functions have been divided into distinct divisions, *viz.*, executive and judicial.

(5) Income-tax Officers' main duty is to make assessment. They are in immediate control of the office and are responsible to the Assistant Commissioners.

### Section 6.

Income, profits and gains may be divided under the following heads :—

- (1) Salaries.
- (2) Interest on securities.
- (3) Property.
- (4) Business.
- (5) Professional earnings.
- (6) Other sources.

As sources of income are different in character, it is necessary to have some groupings. The process of arriv-

ing at the assessable income in each case is different because deductible allowances have naturally to be and actually are different in kind. Moreover, the bases of assessment are of necessity different and income from one source may bear deduction at source, whereas the income from another may not bear that deduction at source but taxed after the assessee has received them.

### Section 7(1). Salaries.

Tax is payable in respect of any salary, wages, annuity, pension, fees, commission, perquisite, etc.

But tax is not to be paid in respect of any sum deducted under the authority of the Government from the salary of any individual in order to make provision for his wife and children [7(1) Proviso].

#### Note:—

(1) Annuity in this section refers only to annuities paid in connection with one's service—not to annuities granted under a will or in connection with an insurance policy.

(2) Rent-free house is a perquisite.

(3) Question of deduction from salary raises the question of similar deduction, *viz.*, Provident Fund deductions.

### Section 7(2). A case covered by the term *deemed* in section 4(1).

Salaries of employees (British or non-British subject) of the Government or of a local authority in British India working in a Native State will be taxed.

Post Office employees posted in Native States will come under this.

*Abatement under section 7(1) Proviso and under section 15(1).*

**Section 7(1). Proviso :**

Amount deducted from one's salary, under the authority and with the permission of the Government for the purpose of securing a deferred annuity to him or making provision for his wife and children.

**Section 15(1).**

Amount paid by one to an insurance company in respect of an insurance or deferred annuity on his own life or on the life of his wife.

Amount paid by him as a contribution to any of the Provident Funds (under Provident Funds Act 1897 now Act XIX of 1925 and also under Provident Insurance Societies Act of 1912).

Provided the total abatement claimed does not exceed one-sixth of the total income.

**Note:—**

The abatement does not apply to super-tax, *i.e.*, super-tax is levied on the total income undiminished by any abatements.

**Section 7(1) Proviso and section 15(1).**

A little confusion may arise as to the necessity of section 7(1) Proviso when there is the more comprehensive section 15(1) which includes not only

- (1) insurance on his own life or on the life of his wife, and
- (2) contract for a deferred annuity on his own life or on the life of his wife; but also
- (3) contribution to any Provident Fund to which the Provident Funds Act 1897 applies or



to any Provident Fund which complies with the provision of the Provident Insurance Societies Act 1912.

The proviso to section 7(1) is meant to serve another purpose. While section 15 deals with insurance and provident fund deductions, the proviso to section 7(1) refers only to compulsory deductions made under the authority of the Government, not of other employers and such compulsory deduction must not exceed  $\frac{1}{6}$  of the salary.

*Illustration:*

The salary of Professor Gurcharan Lal of the Lucknow University is Rs. 1,200 p.m. 8% on his pay is deducted for his Provident Fund (semi Government Provident Fund, which comes under Act XIX of 1925). Find out the net sum payable to Mr. Lal per month and his liability to income-tax.

| Gross salary                      | Provident Fund deduction                           | Income-tax deducted                              |
|-----------------------------------|--|--|
| $1,200 \times 12$<br>=Rs. 14,400. | 8% being 96<br>$96 \times 12 = \text{Rs. } 1,152.$ | Rs. 69 p.m.<br>$69 \times 12 = \text{Rs. } 828.$ |

Total income of Mr. Lal:—

|                            |     |           |                                    |
|----------------------------|-----|-----------|------------------------------------|
| (1) Salary                 | ... | ...       | Rs. 14,400                         |
| (2) Examination fees       | ... | ...       | nil                                |
| (3) Interest on securities | ... | ...       | nil                                |
| (4) House property         | ... | ...       | nil                                |
|                            |     |           | Rs. 14,400                         |
|                            |     |           | Total income<br>(rate 12 pies).    |
| Less Provident Fund        | ... | Rs. 1,152 |                                    |
| Taxable                    | ... | ...       | Rs. 13,248 at 12 pies<br>=Rs. 828. |

∴ tax payable is Rs. 828, which being already paid by way of monthly deduction, nothing more to be paid.

The monthly net salary receivable by Mr. Lal:—

|                     |     |     |     |           |
|---------------------|-----|-----|-----|-----------|
| Salary              | ... | ... | ... | Rs. 1,200 |
| Less Provident Fund | ... | ... | ... | 96        |
|                     |     |     |     | Rs. 1,104 |
| Less Income-tax     | ... | ... | ... | 69        |
|                     |     |     |     | Rs. 1,035 |

*Illustration:*

Assuming Mr. Lal has the additional following incomes:—

|                                    |     |     |           |
|------------------------------------|-----|-----|-----------|
| Examination fees                   | ... | ... | Rs. 1,500 |
| Interest from bank deposit         | ... | ... | Rs. 4,500 |
| Rent from house property (let out) | ... | ... | Rs. 2,100 |

His life insurance premiums are Rs. 160 per month.

Total income:—

|                                |           |           |                        |                                 |
|--------------------------------|-----------|-----------|------------------------|---------------------------------|
| (1) Salary                     | ...       | ...       | Rs. 14,400             |                                 |
| (2) Examination fees           | ...       | ...       | Rs. 1,500              |                                 |
| (3) Bank interest              | ...       | ...       | Rs. 4,500              |                                 |
| (4) House property:            |           |           |                        |                                 |
| Rents                          | ...       | Rs. 2,100 |                        |                                 |
| Less $\frac{1}{2}$ for repairs | ...       | Rs. 350   |                        |                                 |
|                                |           |           | <u>Rs. 1,750</u>       |                                 |
|                                |           |           | Rs. 22,150             | Total income<br>(rate 19 pies). |
| Less Provident Fund            | Rs. 1,152 |           |                        |                                 |
| Less Life insurance premium    | ...       | Rs. 1,920 |                        |                                 |
|                                |           |           | <u>Rs. 3,072</u>       |                                 |
|                                |           |           | Rs. 19,078             | Taxable.                        |
| $\therefore$ 19,078 at 19 pies | ...       | ...       | Rs. 1,887 14 10        |                                 |
| Less tax already paid          | ...       | ...       | Rs. 828 0 0            |                                 |
|                                |           |           | <u>Rs. 1,059 14 10</u> |                                 |

Rs. 1,059 14 10 yet to be paid by Mr. Lal.

**Note:—**

In *Banke Behari Lal v. Commissioner of Income-tax, Punjab*, the Lahore High Court decided that the salaries actually received during the year would be taxed. Salary due but left undrawn until 1st April would not be included.

The idea of taxing on "due" basis will meet the case where drawing of salary is deferred to avoid higher rate of tax but "due" basis has the defect of taxing items which may never come into the possession of the assessee. Probably the idea of taxing on "due" basis goes against the spirit of the Act for throughout the Act, expressions "accrued, arisen or received" form the basis.

### Provident Fund

For income-tax purposes provident funds can be of three classes :

- (1) Provident Funds Act 1897 (XIX of 1925 as now known).
- (2) Recognised Provident Fund (Chapter IX A of the Income-Tax Act).
- (3) Private Provident Fund (*i.e.*, unrecognised).

**Class (1):**—Three kinds of provident funds are included :

- (a) Government Provident Fund and Railway Provident Fund.
- (b) Local Authority Provident Fund.
- (c) General, *e.g.*, University, Affiliated Colleges, Imperial Bank, Reserve Bank.

Contribution by employer is exempt.

Contribution by employer is exempt as is evident from the fact that accumulated balance at the credit of the subscriber is exempt from tax.

**Class (2):**—Contribution by an employee exempt from income-tax (not super-tax).

Contribution by an employer exempt in the hands of the recipient from income-tax, but enters into total income to augment the rate (not exempt from super-tax).

Contribution by employer is allowed as a business expense in his profit and loss account.

**Note:—**

(Conditions should be noted as in Chapter IX A of the Act.)

**Class (3):**—Contributions by employer are allowed as a business expense where funds are constituted as irrevocable trusts. In many cases the employer charges

the entire sum of his contribution as business expense at the time of actual payment. This charge is allowed. This amount is then taxed at the hands of the recipient. Employee's contribution per month is not allowed as a deduction from total income or in other words his own contribution is taxed monthly. Hence at the time of actual receipt of Provident Fund account, his own contribution must be eliminated from the assessee's total income.

### Section 8. Interest on securities.

The interest chargeable under this section is the interest only on securities of the Government of India or of a local Government or on debentures or other securities for money issued by or on behalf of a local authority or company (debentures issued by associations, firms, clubs, etc., do not come under this—they come under section 12).

#### Note:—

(1) If any direct expenses are incurred for earning the interest (*e.g.*, a man borrows a certain sum to purchase securities, the interest on the borrowed money should be regarded as expense) such expenses are to be deducted from the gross amount of interest in order to bring it to assessable income.

(2) In connection with this source of income, tax is deducted at source at the maximum rate.

(3) Income under this head is assessable on the basis of actual receipt.

(4) The question frequently arises as to whether the profit from sale of securities is an accretion to capital or income. If the former, it is not taxable, but if it is the latter, it is taxable.

In the case of Amritsar Produce Exchange, the Lahore High Court decided that the facts of every case have to be considered. It is upon the assessee to prove by documentary evidence or treatment in account-books or in other ways that his intention was

to permanently set aside a sum from the floating capital in which case it would not be taxable, otherwise it will be taxable being regarded as income.

(5) An assessee deposited Government securities with a bank against an overdraft granted to him. He claimed deduction of interest payable to bank from interest receivable from securities. This was not allowed. (*Mahadeo Ashram Prasad v. C.I.T., Bihar, 1927.*)

(6) Where a business carrying on banking receives deposits or loans in the course of its trading activities, the interest on these deposits and loans will be allowed as a deduction from its entire income.

7. (a) Interest on sterling securities of the Government of India or those issued by English companies carrying on business in British India would be chargeable when such interest is received by a holder of the security in British India.

(b) When a holder of such a sterling security is in U.K., he is not chargeable because the *right to receive* is in U.K.

(c) When a holder of a security of the Government of India is in U.K. and receives the interest there, he is liable to tax because in this case, the *right to receive* is in British India.

(8) Income-tax free securities are not free from Super-tax.

(9) The following are entirely exempted from the operation of the Act :—

- (a) Yield of Post Office cash certificates.
- (b) Interest on deposit in the Post Office Savings Bank.
- (c) Interest on Mysore Durbar Securities.
- (d) Interest on securities held by Provident Fund.

(10) Interest on Government securities (upto a face value of Rs. 22,500) purchased through the post office and held in the custody of the Accountant-General, Posts and Telegraphs, on account of any one assessee, shall be exempt from the tax but it shall be included in the total income.

(11) Interest on securities received by a Cooperative Society is not exempted from the tax. Such interest from its investments is not profit contemplated by Government notification. (The Madras Central Urban Bank, Ltd., *v.* C.I.T., Madras, 1929.)

(12) Commission paid to bank for collecting interest on securities is exempt from the tax.

(13) The only Government Securities (other than I.T. free securities) from the interest on which Income-tax is not deducted are Treasury Bills.

(14) With respect to Government Securities :

(a) When they are held by an Indian State, the State is not assessable to Income-tax or Super-tax except under the Government Trading Taxation Act 1926, *i.e.*, unless the State carries on trade or business.

(b) When they are held by Ruling Princes or Chiefs as their private property, they are exempted by Section 60.

(15) With respect to other Securities, *i.e.*, local authorities, Companies, etc.,

(a) Indian State is exempt.

(b) Ruling Princes not exempt.

### Section 9. House Property.

Tax shall be paid in respect of annual value of property consisting of any buildings or lands of which he

is the owner. It is only the owner who is liable to pay tax under this head. Where a person derives income from house property which he holds on lease, such income is chargeable under section 12. Lands not attached to a building are not chargeable under this section.

The expression "annual value" means the sum for which the property might reasonably be expected to let from year to year. The annual value is a matter to be decided entirely by the Income-tax Officer. Still the value fixed by the local bodies for rating purposes is a very important factor for guidance, but it is not binding upon the Income-tax Officer. In fixing the annual value the Income-tax Officer takes into consideration mainly the rents received from year to year.

The annual value mentioned here represents gross value. Where net value has been mentioned in property tax bills, for assessment purposes, gross value has to be found out (net value is generally 90 per cent of the gross).

Roughly the following allowances may be given to arrive at the basis of assessment :—

- (1) Repairs not exceeding  $\frac{1}{6}$  of the gross value (obligatory).
- (2) Insurance premium paid against fire, damage and destruction.
- (3) If the property is subject to a mortgage or capital charge, interest payable on such mortgage or charge.
- (4) Ground rent of property payable if subject to it.
- (5) Any land revenue paid in respect of property.
- (6) Collection charges actually paid not exceeding 6 per cent of the gross value.

- (7) Occasional vacancies should be taken into account.
- (8) Interest payable on capital borrowed to acquire the property.

Aggregate of these allowances in a particular year must not exceed the annual value. In other words, in the matter of set-off (section 24), no *minus* quantity can be claimed in respect of house property.

**Section 9(2). Proviso. Owner's own residence.**

Whereas the *bona-fide* annual value alone forms the basis of assessment in the matter of house property (meant for letting), in the case of owner's own residence its assessable value is the annual value provided the amount does not exceed 10 per cent of the total income of the assessee.

This proviso relieves the hard cases of those who have a big ancestral dwelling house without any substantial money income.

It is difficult to put an ordinary interpretation to this proviso, for, according to the proviso, the annual value which is only a part of the total income depends for its ascertainment on the whole. When a part depends on the whole (the whole always depending upon the independent parts) a difficulty is inevitable. The only workable method would be to divide by 11 the income from all other sources (including house property let out). This will give the net annual value of the dwelling house.

*Illustration :*

Mr. K.'s monthly salary is Rs. 300. He received interest from War Loan securities Rs. 1,502 (gross). He has two houses: in one he resides, the annual value of which was estimated at Rs. 800, and the other is let out, the annual value being Rs. 900. Find out his total income.



*Statement of Total Income.*

|  |     |         |                         |
|--|-----|---------|-------------------------|
| 1. Salary Rs. 300 x 12   | ... | ...     | Rs. 3,600               |
| 2. Interest on securities  | ... | ...     | Rs. 1,502               |
| 3. House let out:—   |     |         |                         |
| Gross annual value   | ... | Rs. 900 |                         |
| *Less $\frac{1}{4}$ for expenses   | ... | Rs. 150 |                         |
|  |     |         | 750                     |
|  |     |         | Rs. 5,852               |
| 1/11th of Rs. 5,852 is the net annual value of the dwelling house (net, i.e., after $\frac{1}{4}$ th deducted) | ... | ...     | Rs. 532                 |
|  |     |         | Rs. 6,384 Total income. |

Whether the net annual value comes to be Rs. 532 from the total income as per the Act can be tested:—

|   |            |     |         |
|---|------------|-----|---------|
| Total income  | Rs. 6,384. |     |         |
| According to the proviso, annual value must not exceed 10%. i.e., | ...        | ... | Rs. 638 |
| Less $\frac{1}{4}$ th for repairs                                 | ...        | ... | Rs. 106 |
|   |            |     | Rs. 532 |

**Section 9(1) Proviso.**

Against the head "house property," nothing less than "nil" can be included in the total income.

*Illustration:*

A man buys a house by borrowing Rs. 20,000 @ 6% p.a. interest. The annual value of the house is Rs. 1,000.

The assessee will not be allowed to include in the total income loss of Rs. 200 arrived at as follows:—

|                                       |     |     |           |
|---------------------------------------|-----|-----|-----------|
| Annual value                          | ... | ... | Rs. 1,000 |
| Less charges thereon 6% on Rs. 20,000 | ... | ... | Rs. 1,200 |
| Loss                                  | ... | ... | Rs. 200   |

In such a case, against the head 'property', 'nil' will be included.

\*Gross annual value of the let out house less repairs should be included in the total income.

*Illustration :*

A owns 4 houses in one of which he lives. The other three houses are let out and their annual value (as agreed to by Income-tax Officer) is fixed at Rs. 6,000, Rs. 5,000 and Rs. 3,000. The annual value of the residential house is Rs. 1,600 as per municipal valuation. The owner incurred the following expenses:—

|                                |     |     |           |
|--------------------------------|-----|-----|-----------|
| Fire insurance premium         | ... | ... | Rs. 125   |
| Repairs                        | ... | ... | Rs. 3,200 |
| Municipal taxes                | ... | ... | Rs. 1,500 |
| Land revenue                   | ... | ... | Rs. 70    |
| Collection charges             | ... | ... | Rs. 1,200 |
| Owner's life insurance premium | ... | ... | Rs. 2,400 |

Find out the taxable income of the assessee and the tax payable.

|                                  |     |            |
|----------------------------------|-----|------------|
| Annual value of 3 houses let out | ... | Rs. 6,000  |
|                                  |     | Rs. 5,000  |
|                                  |     | Rs. 3,000  |
|                                  |     | <hr/>      |
|                                  |     | Rs. 14,000 |

Less deductions allowed:—

|                           |         |            |
|---------------------------|---------|------------|
| $\frac{1}{2}$ for repairs | ...     | Rs. 2,333  |
| Land revenue              | ...     | Rs. 70     |
| Fire insurance premium    | Rs. 125 |            |
| Collection charges 6%     | ...     | Rs. 840    |
|                           |         | <hr/>      |
|                           |         | 3,368      |
|                           |         | <hr/>      |
|                           |         | Rs. 10,632 |

|   |     |         |
|---|-----|---------|
| Add net annual value of the dwelling house being 1/11 | ... | Rs. 967 |
|---|-----|---------|

|                             |     |            |
|-----------------------------|-----|------------|
| Total income                | ... | Rs. 11,599 |
| Less life insurance premium | ... |            |
| $\frac{1}{2}$ of Rs. 11,599 | ... | Rs. 1,933  |
|                             |     | <hr/>      |
| Total income                | ... | Rs. 9,666  |

(Municipal taxes are not an allowable deduction.)

Legal expenses incurred in recovering rents from tenants should be treated as a permissible deduction included in collection charges subject to the following conditions :—

- (a) Only net legal expenses, that is, expenses after deducting any costs recovered from the opposite party will be deducted.
- (b) The actual expenses incurred in excess of the costs deducted will be allowed in the year in which the decree is passed; a further allowance for costs proved to be irrecoverable will be given later, if necessary.
- (c) The total allowance for collection charges including legal expenses allowed must, of course, not exceed the statutory 6 per cent.

*Property: Deduction for unrealised rent.*—Unrealised rent on any property is exempt from income-tax and is also excluded in computing the total income of an assessee, provided that—

- (a) the tenancy is *bona fide*;
- (b) the defaulting tenant has vacated, or steps have been taken to compel him to vacate, the property;
- (c) the defaulting tenant is not in occupation of other property of the assessee; and
- (d) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent.

*Property in lots.*—Section 9 does not contemplate separately in respect of each building or any lot of buildings. Income should be computed on the whole of the assessee's property. Consequently allowances should be against the whole property of which he is the owner.

*Illustration :*

X's income from house properties for the year ending 31st December, 1929 is as follows:—

*Lot No. I.*

|                                  |          |           |
|----------------------------------|----------|-----------|
| Rent as per municipal assessment |          | Rs. 10800 |
| Expenses on above:—              | Rs.      |           |
| Fire insurance premium           | ... 350  |           |
| Repairs etc.                     | ... 1950 |           |
| Collection charges               | ... 250  |           |
| Interest on mortgage             | ... 900  |           |

*Lot No. II.*

|                                  |          |          |
|----------------------------------|----------|----------|
| Rent as per municipal assessment |          | Rs. 4860 |
| Expenses on above:—              | Rs.      |          |
| Fire insurance premium           | ... 150  |          |
| Repairs                          | ... 1000 |          |
| Collection charges               | ... 350  |          |

Ascertain the assessable income.

This illustration will show that allowances if given on the basis of separate lots of property will ultimately be different from what the total of allowances ought to be if the properties are combined and regarded as one item only.

|                              |           |           |
|------------------------------|-----------|-----------|
| Gross rents from properties  | Rs.       |           |
| Lot I                        | ... 12000 |           |
| Lot II                       | ... 5400  |           |
|                              |           | Rs. 17400 |
| Less deductions allowed:—    |           |           |
| Fire premium (350+150)       | ... 500   |           |
| Collection charges (250+350) | ... 600   |           |
| Repairs                      | ... 2900  |           |
| Interest on mortgage         | ... 900   |           |
|                              |           | Rs. 4900  |
| Total income taxable         | ...       | Rs. 12500 |

In the matter of the Official Assignee for Bengal (1937, I.T.R., 233) a person was adjudged insolvent under Presidency Towns Insolvency Act 1909 and his house properties vested in the Official Assignee. The Calcutta High Court decided that income from properties would

come under taxation according to section 17 of the Presidency Towns Insolvency Act and Official Assignee was the owner of the property. Under section 9 of the Insolvency Act the Official Assignee would be assessed as 'owner' of the property.

**Note:—**

A Company owning house properties and earning rents therefrom is assessable under section 9 on such income. It will not be assessable under sec. 10.

### **Section 10. Business.**

Tax under this head shall be payable by an assessee on the income, profits, gains of any business, commerce, trade, manufacture carried on by him, subject to certain deductions.

The following may well serve as guiding principles to determine which items will not be allowed as deductions :—

- (1) Appropriation of profits, *e.g.*, drawings, proprietor's salaries, interest on capital, income-tax, etc.
- (2) Items of capital nature, *e.g.*, improvements, formation expenses, etc.
- (3) Expenses or charges which may be varied at will by the assessee, *e.g.*, provision for doubtful debts, depreciation beyond a statutory limit.
- (4) Losses and expenses not inevitable in that particular business, *e.g.*, donations.

The method usually adopted in finding out the assessable profits of a business for income-tax purposes is as follows :—

- (1) Take the net profit as shown by the profit and loss account.

- (2) Add thereto any items debited in the profit and loss account, but not allowable.
- (3) Deduct items credited in the profit and loss account but not allowable as credits.
- (4) Deduct items credited in the profit and loss account which have already been taxed by deduction or which are assessable under some other head.

*Illustration :*

## Trading and Profit and Loss Account.

|                           | Rs.      |                            | Rs.      |
|---------------------------|----------|----------------------------|----------|
| To stock ...              | 1200     | By sales ...               | 3900     |
| To purchases ...          | 1500     | By stock ...               | 1000     |
| To gross profit ...       | 2200     |                            |          |
|                           | 4900     |                            | 4900     |
| To rent ...               | 125      | By G.P. ...                | 2200     |
| To rates ...              | 20       | By commission ...          | 30       |
| To electricity ...        | 15       | By dividends ...           | 150      |
| To gas ...                | 10       | By sale of scrap materials |          |
| To wages ...              | 40       | of a building ...          | 100      |
| To charities ...          | 5        |                            |          |
| To repairs ...            | 25       |                            |          |
| To commission ...         | 10       |                            |          |
| To depreciation ...       | 55       |                            |          |
| To Goodwill A/c ...       | 300      |                            |          |
| To building extension ... | 500      |                            |          |
| To income-tax ...         | 75       |                            |          |
| To net profit ...         | 1300     |                            |          |
|                           | Rs. 2480 |                            | Rs. 2480 |

## Adjustment Account (for income-tax).

|                                   | Rs.                   |                           | Rs.                  |
|-----------------------------------|-----------------------|---------------------------|----------------------|
| To dividends ...                  | 150                   | By net profit ...         | 1300                 |
| To sale of building materials ... | 100                   | By charities ...          | 5                    |
| To net profit as adjusted 1930    |                       | By Goodwill A/c ...       | 300                  |
|                                   |                       | By building extension ... | 500                  |
|                                   |                       | By income-tax ...         | 75                   |
|                                   | <hr/> Rs. 218.) <hr/> |                           | <hr/> Rs. 2180 <hr/> |

The same net profit may be arrived at by recasting the profit and loss account afresh eliminating the non-allowables as indicated before.

**Note:—**

(1) Charities and donations are not inevitable business expenses and therefore not allowable.

(2) Goodwill and extension are capital items, therefore not allowed.

(3) Income-tax—It is an appropriation of profits, therefore not allowed.

(4) Dividends—

(a) It is a foreign item not connected with trading profits.

(b) It is already taxed.

(c) It should be included under a separate head.

(5) Sale of a part of building is a capital gain, therefore not allowable as a credit.

It should, however, be noted that except in clear cases of trade expenses or trade receipts, all items are decided after a careful examination and explanation from the assessee.

*Illustration of partnership accounts :*

## Profit and Loss Account.

|                        | Rs.   |          | Rs.      |                 | Rs.      |
|------------------------|-------|----------|----------|-----------------|----------|
| To Salary              | Rs.   |          | Rs.      | By Gross profit | ... 3660 |
| A ...                  | 200   |          |          |                 |          |
| B ...                  | 60    |          |          |                 |          |
|                        | <hr/> |          | ... 260  |                 |          |
| To Office staff        |       |          | ... 730  |                 |          |
| To Rent                |       |          | ... 165  |                 |          |
| To Gas and electricity |       |          | ... 155  |                 |          |
| To Bad debts reserve   |       |          | ... 190  |                 |          |
| To Interest on capital |       |          |          |                 |          |
|                        | Rs.   |          |          |                 |          |
| A ...                  | 170   |          |          |                 |          |
| B ...                  | 220   |          |          |                 |          |
|                        | <hr/> |          | ... 390  |                 |          |
| To Legal charges       |       |          | ... 40   |                 |          |
| To Net profits         |       |          | ... 1730 |                 |          |
|                        |       |          | <hr/>    |                 |          |
|                        |       | Rs. 3660 |          |                 | Rs. 3660 |
|                        |       | <hr/>    |          |                 | <hr/>    |

A and B in the above partnership share equally. Find out from the above the amount on which each has to pay tax.

## Adjustment Account.

|                         | Rs.      |                        |  | Rs.      |
|-------------------------|----------|------------------------|--|----------|
| To balance              |          | By N.P. ...            |  | ... 1730 |
| being firm's assessable |          | By salaries A and B    |  | ... 260  |
| profits ...             | ... 2610 | By B/D reserve         |  | ... 190  |
|                         |          | By Interest on capital |  | ... 390  |
|                         |          | By Legal charges       |  | ... 40   |
|                         |          |                        |  | <hr/>    |
|                         | Rs. 2610 |                        |  | Rs. 2610 |

**Note:—**

Partners' salaries are appropriations of profits and hence not allowable.

Legal charges are not allowed unless they are in connection with the realisation of bad debts.

Reserve is an appropriation of profits—not allowable.

Interest on capital—It is a capital item—not allowable.



The firm's assessable profits are Rs. 2610. If, now, this amount is equally divided and each one is to pay tax on Rs. 1305, it will be inequitable inasmuch as the partners do not get equal salaries or interest on capital. The equitable division and the only correct division will be as follows:—

|                            |      |              |          |
|----------------------------|------|--------------|----------|
| Firm's assessable profits  | ...  |              | Rs. 2610 |
|                            |      | Rs.          |          |
| Less salary A and B        | ...  | 260          |          |
| Less Interest on capital   | ...  | 390          |          |
|                            |      |              | Rs. 650  |
|                            |      |              | Rs. 1960 |
| Rs. 1960 equally divided:— |      |              |          |
|                            |      | Rs.          |          |
|                            | A    | ...          | 980      |
|                            | B    | ...          | 980      |
| ∴ A will be taxed on       | ...  | 980          |          |
|                            |      | 200 salary   |          |
|                            |      | 170 interest |          |
|                            |      | 1350         |          |
| and B will be taxed on     | ...  | 980          |          |
|                            |      | 60 salary    |          |
|                            |      | 220 interest |          |
|                            |      | 1260         |          |
| ∴ A on Rs.                 | 1350 |              |          |
| ∴ B on Rs.                 | 1260 |              |          |

2610 (Firm's assessable profits).

### Depreciation:—

It is really shrinkage in the value of the assets by use or effluxion of time. This shrinkage is strictly a capital item, therefore in the English system of income-tax no allowance is given as depreciation, but allowance is shown in another form, *viz.*, wear and tear. Instead of meeting this important requirement of business indirectly, the Indian Act has directly provided for it by allowing a fixed rate as depreciation.

It is only the particular classes of buildings, machineries, plant or furniture mentioned in rule 8 in

respect of which the depreciation allowance can be claimed for the purpose of business only if such business is carried on by the owners of such properties. Rule 8 is quoted below :—

*Rule 8.\** An allowance under section 10(2) (vi) of the Act in respect of depreciation of buildings, machinery, plant or furniture shall be made in accordance with the following statement:—

| Class of buildings, machinery, plant<br>or furniture.  | Rate.<br>Percentage on<br>prime cost. |
|--|---------------------------------------|
| 1. Buildings—  |                                       |
| (1) First class substantial buildings of selected materials ... ..   | 2½                                    |
| (2) Buildings of less substantial construction ... ..  | 5                                     |
| (3) Purely temporary erections such as wooden structure ... ..   | 10                                    |
| 2. Machinery, Plant or Furniture—  |                                       |
| General rate ... ..  | 5                                     |
| Rates sanctioned for special industries—Flour Mills, Rice Mills, Bone Mills, Sugar Works, Distilleries, Ice Factories, Aerating Gas Factories, Match Factories ... ..  |                                       |
|  | 6¼                                    |
| Paper Mills, Ship Building and Engineering Works, Iron and Brass Foundries, Aluminium Factories, Electrical Engineering Works, Motor Car Repairing Works, Galvanizing Works, Patent Stone Works, Oil Extraction Factories, Chemical Works, Soap and Candle Works, Lime Works, Saw Mills, Dyeing and Bleaching Works, Furniture and Plant in hotels and boarding houses, Cement Works using rotary kilns ... .. |                                       |
|  | 7½                                    |
| Plant used in connection with brick manufacture, tile-making machinery, optical machinery, glass factories, Telephone Companies, Mines and Quarries, Tubewell boring plant, concrete pile driving machines ... ..  |                                       |
|  | 10                                    |
| Sewing machines for canvas or leather ... ..   | 12½                                   |
| Motor cars used solely for the purpose of business ... ..  | 15                                    |
| Indigenous sugarcane crushers (Kolhus or Belans) ... ..  | 15                                    |
| Motor taxis, motor lorries and motor buses ... ..  | 20                                    |

\* The depreciation rates of some very important items have been given.

## 3. Electrical Machinery—

(a) Batteries ... .. 15

(b) Other electrical machinery, including electrical generators, motors (other than tramway motors), switchgear and instruments, transformers and other stationary plant and wiring and fittings of electric light and fan installations ... .. 7½

4. Cinema recording, reproducing equipment, Developing machine, Printing, Editing machine Synchronisers, Studio lights etc. ... .. 15

*Rule 9.* For the purpose of obtaining an allowance for depreciation under proviso (a) to section 10 (2) (vi) of the Act, the assessee shall furnish particulars to the Income-tax Officer in the following form:—

| Description of buildings, machinery, plant or furniture. | Original cost. | Capital expenditure during the year for additions, alterations, improvements and extensions. | Date from which used for the purposes of the business. | Particulars (including original cost, depreciation allowed and value realised by sale of scrap value) of obsolete machinery, plant or furniture sold or discarded during the year, with dates on which first brought into use and sold or discarded. | Remarks. |
|--|----------------|--|--|--|----------|
| 1  | 1A             | 2  | 3  | 4  | 5        |
|  |                |  |  |  |          |

I declare that to the best of my information and belief the buildings, machinery, plant and furniture described in column 1 of the above statement were the property of during the year ended and that the particulars entered in the statement are correct and complete.

Place

Signature

Date

Designation

**Note:—**

(1) The assessee has to keep an account of the original cost (original cost to the person who is being actually assessed and not to the previous owner of the business) of the buildings, plant, etc., and also actual allowances granted each year for depreciation.

(2) Property depreciated must belong to the assessee.

(3) Property must be used for business.

(4) Property must come under the list in rule 8.

(5) Original cost includes cost of freight, pay of engineering staff, who erect the machinery and all such expenditure up to the point of actually starting work.

(6) The rates of depreciation allowance fixed in rule 8 are fixed rates for the whole of India. Depreciation at those rates must be allowed each year when there are sufficient profits, and only the excess of the depreciation allowance over profits can be carried forward from year to year until absorbed, and this practice must be followed whether the depreciation allowance is adjusted in the accounts of the assessee or not and irrespective of the amount shown in the accounts. It is for this reason that in the form of returns of income prescribed in rules 18 and 19 any amounts entered in the accounts of an assessee for the depreciation of any of the assets of the business must be written back as the amount allowed for income-tax purposes is the amount prescribed in the rules and not the amount entered in the books of the assessee.

Where an assessee owns more businesses than one, any part of the depreciation allowance in respect of one business, that cannot be set off against the profits of the same business, owing to the profits in question being insufficient, shall be set off, -if possible, against the profits *for the same year* of any other business or businesses owned by the assessee. Any amount of depreciation that cannot

be set off against the assessee's business profits for the *same year*, whether he owns one business or more, shall be set off under section 24 against his income, profits or gains under any other head *in that year*. Any part of the *depreciation allowance* due to an assessee that cannot be set off against his income, profits or gains under all heads *for the year* in question, shall be carried forward to the *next year* under proviso (b) to sub-section (2)(vi) of section 10 of the Act. The assessee should not be allowed the option of *either* setting off unabsorbed depreciation allowance against the profits of any other business or against other heads of income, profits or gains on the one hand *or* carrying it forward on the other.

### Section 10(2) (vii).

Obsolescence allowance is only in respect of plant and machinery.

If a machinery is obsolete the firm will write off the residual value of the machinery in the profit and loss account. But for income-tax purposes the amount which will be allowed as debit in the profit and loss account will be found out in the following manner:—

Original cost of the machinery to the assessee  
 Less total depreciation allowance  
 Less scrap value realised

#### *Illustration :*

A machinery cost Rs. 650. After full 3 years of use it became obsolete and was sold off for Rs. 135. Depreciation was allowed at 10% each year. What amount will be allowed as obsolescence?

|                                |   |
|--------------------------------|---|
| Original cost to the assessee  | Rs. 650                                   |
| Less depreciation (65 × 3) ... | Rs. 195                                   |
| Less scrap value ...           | Rs. 135                                   |
|                                | <hr style="width: 10%; margin: 0 auto;"/> |
| Obsolescence allowance         | Rs. 320                                   |

**Items Allowed in the P & L A/c :—**

(1) Where depreciation allowance is not asked for, the cost of replacement should be allowed in the year in which a furniture is replaced.

(2) Debenture interest.

(3) Deduction in the profit and loss account should be allowed in respect of any sums paid on account of land revenue, local rates, cess or municipal taxes in respect of such part of the premises as is used in business.

(4) Obsolescence allowance.

(5) Depreciation according to scheduled rates.

(6) Irrecoverable loans.

(7) Pension to ex-employees.

(8) Reasonable bonus or commission to employee.

(9) Interest on borrowed capital.

(10) Provident Fund allowances (see page 51).

**Items Not Allowed in the P & L A/c :—**

(1) Premium received by a company on shares.

(2) Cost of issuing shares.

(3) Reserve for bad debts or for any fund.

(4) Charities and presents.

(5) Cost of additions, alterations, extensions, improvements, etc.

(6) Income-tax and super-tax.

(7) Drawings or salaries to proprietors.

(8) Interest on partners' capitals.

(9) Private or personal expenses.

(10) Losses sustained in previous years.

(11) Any loss recoverable under an insurance.

(12) Legal charges except in realisation of bad debts, etc.

(13) Commission to under-writers.

(14) Ex-partners' pensions.

In the Pondicherry case it was stated by Lord Macmillan that "a payment out of profits and conditional on profits being earned cannot accurately be described as an expenditure incurred to earn profits."

In the Indian Radio and Cable Communications Co. Ltd. *v.* Commissioner of Income-tax, Bombay, it has been decided by the Judicial Committee that a payment which is made out of profits and conditional on profits being earned may yet be expenditure incurred for earning such profits and so allowable. The real issue is whether the expense was for earning profits. If according to an agreement a manager is paid 5 per cent on the net profits of the year this 5 per cent should be allowed as a business expenditure.

"Business—Allowance in respect of borrowed capital. Section 10(2)(iii). The allowance under this clause can only be given where payment of the interest is not in any way dependent on the earning of the profits. It cannot be allowed, therefore, in respect of any borrowing the interest on which is not payable unless profits are earned or the interest on which varies according to the amount of the profits earned. In all cases it will be a question of fact whether the payment of interest is or is not actually dependent on the earning of the profits." (I.T.M.)

In the Tata Hydro Electric Agency's case the Judicial Committee pointed out the distinction between:

- (1) payment of a share out of profits, *i.e.*, if profits do not arise no payment shall be made; and
- (2) payment of a share out of income where this payment is a dead charge against profit and loss account (*i.e.*, this payment is independent of the assessee's making any profit or not) in order to arrive at the profits.

In Madura Hindu Permanent Fund, Ltd. *v.* C.I.T., Madras, the assessee company advanced loans to members and paid guaranteed interest to subscribers. The fund claimed deduction under section 10(2)(ix). The deduction was allowed. The guaranteed interest was interest earned by the fund and not a return of a surplus arising from an over-estimate. (Style's case did not apply—see Life Insurance chapter).

In the Anglo Persian Oil Company (India) Ltd. case, it was decided that the sum paid by the company as compensation for loss of agency whereby the company relieved itself of further annual payments of commission chargeable to revenue account should be allowed in the revenue account.

### Section 11(1).

Tax shall be paid by an assessee under the head "profession" in respect of the profits of any profession or vocation followed by him.

**Section 11(2).**

Expenses solely incurred for earning this income shall be allowed. Personal expenses are not deductible, neither expenses of capital nature. An allowance should be made in respect of depreciation of building, machinery, apparatus, appliances, plant, furniture and other capital assets used in a profession. The term "capital assets" will include books purchased for profession. The term "profession" refers to legal profession, engineering profession, medical profession, accountants and auditors' profession, etc. An allowance for obsolescence is also admitted in respect of machinery, apparatus, appliances, plant, furniture, etc. To claim obsolescence the assessee will have to show that the assets belong to the assessee and that the assets are solely used for the profession.

The conditions regarding the calculation of depreciation in respect of "business" are the same in "profession" also.

**Section 11(3).** Professional fees received in any part of India by a person ordinarily resident in British India shall be deemed to be profits or gains in section 4(1).

**Section 12.**

Tax shall be paid by an assessee under the head "other sources" in respect of profits of every kind which does not come within the scope of the other heads of income, *e.g.*,

- (1) Interest on bank deposit.
- (2) Rent from sub-letting.
- (3) Examination fees from colleges and universities.
- (4) Income from royalties.
- (5) Income from dividend of a company.
- (6) Income of a Zamindar which does not come under agricultural income.



Zamindari income (except what is covered by agricultural income) will be taxed under this section but deductions like land revenue payable (though administrative difficulties will arise as to exactly what amount is paid by way of land revenue with respect to that particular subject), collection charges and other expenditure incurred solely for the purpose of earning that income should be allowed in computing the taxable income.

In Raja Jyotiprasad Sinha's case it was decided that the owner of a coal-mine who receives royalty on coal is not a person earning profits from business but making an income from "other sources." Hence road cess and public works cess are not allowable deduction from rents and royalties.

(7) Annuity granted under a will.

(8) Yield from Treasury bills.

**Note:—**

Expenses solely incurred for earning this income shall be deductible from the income. Personal expenses are not deductible, neither expenses of capital nature.

**Section 13.**

Income, profits and gains shall be computed in accordance with the method of accounting regularly employed by the assessee.

If no method is regularly employed or if the method does not enable the Income-tax Officer to arrive at a correct estimate of the profits then the Income-tax Officer may determine the basis on which computation should be made.

Under this section assessments may be made on an assumed flat rate of profits on the turnover. The basis of flat rate will be determined by the Income-tax Officer with reference to the convention and practice in similar trades.

The flat rate which may be assumed does not raise any question of law. (Asgar Ali and Mhammad Ali v. C.I.T., U.P.)

Every assessee should maintain accounts with a view to show, at the end of the year, the actual income made by him, so that on production of his yearly revenue account, the I.T.O. can base his assessment on it. If the assessee fails to keep accounts or fails to keep accounts in a way which will give the correct profit at the end of the year he can have no complaints against the I.T.O. for the latter's making an estimate. The I.T.O. will make his estimate on the data available with utmost judiciousness.

The accounts presented by the assessee should *prima facie* be taken as correct. When fraud is detected or doubts arise in the mind of the I.T.O., he can choose his own method of computation. It must be remembered by the I.T.O. that he is in the rôle of a judicial officer and complicated accounts is no ground for rejection of accounts. Strictly regular accounts are not always possible in the case of ordinary traders. (Duni Chand Dhani Ram v. C.I.T., Punjab.)

Mere omission to maintain a profit and loss account and a stock book would not necessarily imply that the method is other than Mercantile system of accounting. Computation of profits under the proviso to section 13 is a matter entirely within the discretion of the I.T.O. and unless it can be shown that such discretion has been illegally and arbitrarily exercised no point of law can possibly arise. (Feroze Shah v. C.I.T., Punjab, 1930.)

In the case of Shiva Prashad Gupta v. C.I.T., U.P., 1929, it was held that the powers of the Income-tax Officer under section 13 were not arbitrary.

In C.I.T., Madras v. Subramaniam Chettiar, 1927, it was pointed out that an assessee may adopt either Mercantile system or cash system but he cannot use Mercantile system for the purpose of keeping books of accounts and cash system for the purpose of income-tax assessment.

In *The Ahmedabad New Cotton Mills v. C.I.T., Bombay, 1928*, the assessee submitted his return in which he undervalued both his opening and closing stock. A revaluation of the closing stock was ordered by the I.T.O. but he would not allow a similar revaluation of the opening stock as was naturally insisted upon by the assessee. The High Court decided that there should be revaluation of both the items.

In *Chitnavis v. C.I.T., C.P. (1929)*, it was decided that when interest shown in the accounts, which are kept on Mercantile system, remains unrealised it cannot be taxed.

In *Sahu Jagmandar Das v. C.I.T., U.P. (1935)*, under Mercantile system, interest was shown credited in the accounts but no part realised. It was decided that it was not taxable.

In *Raja Dhakeshwar Prasad v. C.I.T., Bihar (1936)*, Justice Agarwala observed "in my view, therefore, there is no substance in the contention that unrealised interest is in no circumstances assessable to Income-tax and that being the case the assessee was entitled to take such interest into account in ascertaining the assessee's profits unless the method of accounting regularly employed by the assessee is a method which ignores such interest."

In this connection it is very important to emphasise Lord Macmillan's statement in the *Darbhanga Case (1933)*, which runs as follows:—

"A debtor who gives his creditor a Promissory Note for the Sum he owes can in no sense be said to pay his creditor; he merely gives him a document or voucher of debt possessing certain legal attributes."

In *Sarupchand v. C.I.T., Bombay (1936)* it was decided that the Commissioner's contention that it is not open to a person to change a method which he has regularly employed for some years was not correct and that there is nothing in section 13 or the Act to prevent an assessee from changing his method.

**Note:—**

Assessee cannot change his method year to year but he should be allowed to adopt a new regular method.

### **Section 14(1).**

exempts inclusion of Hindu undivided family income received by an individual member.

### **Section 14(2).**

is designed to avoid double taxation; hence tax shall not be payable by an assessee in respect of

(a) dividend income

(b) income from firms or association of individuals where profits have already been taxed in the hands of the

(i) company

(ii) firm or the association of individuals as such.

**Hungerford Investment Trust, Ltd.**, a company registered in England, held the entire ordinary share capital in the **Turner Morrison Co., Ltd.**, registered in India. The latter company paid dividends to the former on the shares held.

The **Turner Morrison Co., Ltd.**, was assessed on the profits barring a sum of Rs. 76,500 exempted under section 4(1) of the Act. This sum of Rs. 76,500 represented the income from its sterling investments in U. K. and therefore it could not be taxed. **Hungerford Investment Trust, Ltd.**, received the dividend of the **Turner Morrison Co., Ltd.**, which included income from sterling investments of Rs. 76,500. So far as the assessment of **Hungerford Trust** was concerned its contention was that once the **T. M. Co., Ltd.**, was taxed (no matter on how much) *any* amount of dividend received by the **Hungerford** from the **T. M. Company** will remain outside the scope of the tax. This decision was given by the **Calcutta High Court** relying entirely on the wordings of the section 14(2) (a) which runs as follows :—

“ The tax shall not be payable by an assessee in respect of any sum which he receives by way of dividends as a shareholder in a company where the profits or gains of the company have been assessed to income-tax.”

The intention of the above section is quite clear, *viz.*, that there shall not be double taxation. The assessee took advantage of the rather loose wordings and the court also had to lay stress on the wordings only and did not allow its receipts Rs. 76,500 to be taxed.

Suppose the profit and loss account of T. M. Co., Ltd., is as follows:—

| <i>Receipt side</i>   | Rs.          |
|---|--------------|
| By agricultural income ... ..   | 40,000       |
| „ interest on sterling investments (not brought into British India) ... | 70,000       |
| „ interest on rupee investments—(gross) ...                             | 20,000       |
| „ business profits ... ..   | 15,000       |
| „ taxed dividends—(gross) ... ..  | 25,000       |
|   | Rs. 1,70,000 |

From the above items of receipt,

Agricultural income is exempt from tax Rs. 40,000

Interest on sterling investments is exempt from tax ... .. Rs. 70,000

The balance (Rs. 60,000) will bear tax unless already borne.

According to the Hungerford Investment Trust, Ltd., decision, as the above T. M. Co. has borne tax on Rs. 60,000, the entire dividend of Rs. 1,70,000 which has been received by Hungerford, Ltd., will go without being taxed.

*Illustration:*

A Maharaja has a big estate in British India. He wants a loan of 10 lacs. Suppose he floats a company in England and issues debentures in U.K. on the security of the estate in British India and agreeing to pay the interest on debenture in England.

In this case the interest on debenture is not liable to Indian income-tax as it has not accrued in British India though the estate is in British India.

**Section 15.**

Tax shall not be payable in respect of Life Insurance payments up to 1/6 of the total income of the assessee.

**Note:—**

(1) Life Insurance premium payments and provident fund payments of the year together must not exceed 1/6.

(2) The above payments will be taken out from the total income which will include gross salary.

**Section 16.**

Determination of total income:—

In the total income, shall be included

- (1) sums exempted under 7(1) proviso,
- (2) „ „ „ 8 second and third provisos,
- (3) „ „ „ 14(2),
- (4) „ „ „ 15,
- (5) sums of income-tax payable in respect of 14(2)(a),
- (6) so much of the income of a wife or minor child of such individual as arises directly or indirectly :
  - (a) from the membership of the wife in a firm of which her husband is a partner,
  - (b) from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner,
  - (c) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart, or
  - (d) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual, and
- (7) so much of the income of any association of individuals consisting of such individual and his wife as arises from assets transferred to the association by such individual.

**Section 17.**

“Restriction of income-tax where margin of income above a certain limit is small (section 17)—

(1) Section 17 is designed to remedy the anomaly which previously existed where an assessee with an income just in excess of one of the stages in the Finance Act and therefore liable to pay income-tax at a higher rate than if his income were just below that stage, found himself, after the payment of the tax, worse off than he would have been, had his taxable income been below that stage.

*Illustration :*

The amounts of tax given in the illustrations below include surcharge of 1/12 :

| Income.   | Tax payable if section 17 had not been passed. | Tax payable under section 17. |
|-----------|--|-------------------------------|
| Rs.       | Rs.  | Rs.                           |
| 1,999 ... | Nil  | Nil                           |
| 2,000 ... | 67 11 0  | 1 0 0                         |
| 2,069 ... | 70 1 0   | 70 0 0                        |
| 4,999 ... | 169 4 0  | 169 4 0                       |
| 5,000 ... | 253 15 0                                       | 170 4 0                       |

(2) The original relief allowed under section 17 and the exemptions referred to in section 7(1), proviso to section 8, and section 15(1) should not be regarded as alternatives. The correct method of working the two sections concurrently is as illustrated in the following example:—

(3) If a man's total income is Rs. 5,010 and he pays Rs. 100 as Insurance premia, the tax he should pay is that on Rs. 4,999 minus Rs. 100 (=Rs. 4,899) at six pies plus surcharge at half pie plus Rs. 11. The tax payable will be the same if his total income is Rs. 5,010 of which Rs. 100 is derived from tax-free securities or from an unregistered firm that has been assessed to income-tax, but if the Rs. 100 were derived from a registered firm, or from dividends the total tax to be suffered would be Rs. 180-4-0 against which credit would have to be given for the tax indirectly suffered on the share of the firm's income or the dividend, Rs. 14-11-0 so that the nett sum payable would be Rs. 165-9-0.

(4) The following points should be borne in mind in applying section 17 where a portion of the assessee's income is derived from an unregistered firm that has paid income-tax:—

- (i) Income-tax is not “payable” by a partner in a firm on his share of the firm's income.

- (ii) Relief is to be given to an assessee in respect of the "income-tax payable by him."
- (iii) Section 17 is to be applied (a) "where necessary," (b) in order to "reduce" the tax and (c) so that the result of an assessee's total income exceeding a sum after which the rate of tax rises, shall not be that the extra tax due to the rise in the rate is greater than the excess of the total income over the maximum sum liable to the lower rate. The section is not to be applied where it is not necessary to do so, that is, where the result of applying it would not be to reduce the tax.

(5) For the purpose of calculating the tax payable by an assessee under section 17, surcharge imposed by the Indian Finance Act, 1935, should be calculated on the rate of tax applicable to the next lower stage of income and then to the amount of tax so arrived at should be added the amount by which his total income exceeds the next lower stage without adding any surcharge on the latter amount. For example, the tax payable on an income of Rs. 5,000 will be the tax payable on Rs. 4,999 at the rate of 6 pies per rupee, viz., Rs. 156-4-0, plus surcharge on this amount, viz., Rs. 13-0-0 plus the difference between Rs. 5,000 and 4,999, viz., Re. 1. Surcharge will not be calculated on the whole amount of tax, viz., Rs. 157-4-0 but only on Rs. 156-4-0." (I.T.M.)

### Section 18.

Every employer, private or Government, is obliged to deduct income-tax from his employees' salary (provided the income is assessable) and from interest on securities paid to the holders of securities.

Super-tax shall not be deducted at source.

#### Note:—

Deduction at source refers to sources, *e.g.*, salary and interest on securities, etc.

Taxation at source refers to assessee, *e.g.*, Firms. Companies which deduct tax before handing over to individual recipients.

### Section 19.

Where Income-tax has not been deducted at source the tax shall be paid direct.



**Section 19A.**

The principal officer of every Company shall, on or before 15th June, furnish the Income-tax authorities in a prescribed manner the names, addresses and amounts of dividends paid during the preceding year:

Penalty for not furnishing—Section 51.

Penalty for furnishing false return—Section 177, I.P.C.

**Section 20.**

The Principal officer of every Company shall supply every person receiving a dividend a certificate to the effect that the Company has paid or will pay Income-tax on the profits distributed.

Penalty for not supplying—Section 51.

This certificate is essential for claiming refund by a shareholder.

**Section 20A.**

The person responsible for paying interest (not being interest on securities) shall supply the authorities with a Return in case the aggregate interest exceeds Rs. 1000.

**Section 21.**

Every employer, private, Governmental or otherwise shall supply by 30th April a Return to the Income-tax Department showing—

- (a) name, address, etc., of every person chargeable under the head "Salaries."
- (b) the amount of the income so received by each such person and the time of payment.
- (c) the amount of income-tax deducted from each.

Penalty for not supplying—Section 51,

*Rule 17.* The return to be delivered to the Income-tax Officer under section 21 of the Act shall be in the following form :—

| Serial number. | Name of person. | Postal address of residence. | Appointment or nature of employment. | Total amount of salary, wages, annuity or pension paid during the year ending on 31st March 19 | House allowance or value of rent-free quarters. | Amount of bonus, gratuity, fees, commission, perquisites or allowances (other than those shown in column 6) or profits in lieu of or in addition to salary or wages (each to be shown separately). | Total of columns 5, 6 and 6A. | Deduction on account of Provident & other funds (Proviso to section 7(1)). | Deduction on account of Life Insurance premia (section 15). | Net amount chargeable. | Amount of tax payable. | Reduction under section 17. | Amount of tax deducted. | Whether person contributes to a recognised provident fund (Chapter IXA). | Remarks. |
|----------------|-----------------|------------------------------|--------------------------------------|--|---|--|-------------------------------|--|---|------------------------|------------------------|-----------------------------|-------------------------|--|----------|
| 1              | 2               | 3                            | 4                                    | 5  | 6   | 6A   | 7                             | 8  | 8A  | 9                      | 10                     | 11                          | 12                      | 12A  | 13       |
|                |                 |                              |                                      |  |   |  |                               |  |   |                        |                        |                             |                         |  |          |

I certify that the above statement contains a complete list of the total amounts paid by \_\_\_\_\_ to all persons who were receiving income on the 31st day of March 19 \_\_\_\_\_ at the rate of Rs. 2,000 per annum, or have received during the year ended on that day not less than Rs. 2,000 in respect of salary, wages, annuity, pension, gratuity, fees,

commissions, perquisites, or profits in lieu of or in addition to salary or wages, and that all the particulars stated are correct.

*Signature of person by whom  
the return is delivered.*

*Date*

### Section 22.

#### 22(1). Company to supply a Return.

The principal officer of every company shall supply on or before 15th June, a return of the total income of the company during the previous year.

*Rule 18* (1) The return of total income of companies required under section 22(1) shall be in the following form and shall be accompanied by a copy of the profit and loss account referred to therein:—

#### *Total income of the company.*

Income, profits, or gains as per profit and loss account for the  
year ended 19 . . . . .

*Add*—Any amount debited in the accounts in respect of—

1. Reserve for bad debts . . . . .
2. Sums carried to reserve for provident or other funds . . . . .
3. Expenditure of the nature of charity or presents . . . . .
4. Expenditure of the nature of capital . . . . .
5. Income-tax or Super-tax . . . . .
6. Rental value of property owned and occupied . . . . .
7. Cost of additions to, or alteration, extensions, improvements of, any of the assets of the business . . . . .
8. Interest on reserve or other funds . . . . .
9. Losses sustained in former years . . . . .
10. Losses recoverable under an insurance or contract of indemnity . . . . .
11. Depreciation of any of the assets of the company . . . . .
12. Expenses not incurred solely for the purpose of earning the profits . . . . .

TOTAL Rs. \_\_\_\_\_

*Deduct*—Any profits or income included in the accounts on account of—

- (a) Interest (net amount) on securities taxed at source .
- (b) Interest on securities tax-free . . . . .
- (c) Dividends (net amount) from companies taxed in  
British India
- \*(d) Other items already taxed at source (specify details) .

BALANCE Rs. \_\_\_\_\_

If the company owns any property not occupied for the purposes of the business a statement in the form prescribed in Schedule A to rule 19 should be attached with particulars of the credit and debit on account of such property entered in the accounts.

*Declaration.*

I, the \_\_\_\_\_ [Secretary,  
etc., (see section 2 (12) of the Act)] of the  
(name of Company) declare  
that the information against each head in this return is  
correctly given as shown in the books of the Company as  
also in the accounts which have been duly audited by the  
auditors of the company and which had been adopted by  
the shareholders of the Company.

(Signature)

(Designation)

*Dated*                    19 . . . . .

(2) The company shall also attach to the return a statement showing the sums charged in the accounts under the provisions of section 58-K(2).

22(2). **Income-tax Officer to serve a notice on anybody requiring him to supply a Return.**

In case of anybody other than a Company if the Income-tax Officer thinks he is chargeable to income-tax,

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\*NOTE.—If any other deduction is to be claimed, please give particulars thereof in a separate letter to be forwarded with the return.

he shall serve a notice requiring him to supply a Return in the prescribed form within the time given (not less than 30 days).

Person carrying on businesses at different centres :—

Separate notices under section 22(2) asking for separate Returns for each branch are not required. (Lachman Prasad Babu Ram, Allahabad, 1930.)

**22(3). Revised Return allowed.**

If any person has not furnished a Return within the time allowed or in case of any omission or error a revised Return can be submitted any time before the assessment is made.

**22(4). Income-tax Officer can ask accounts to be produced.**

The Income-tax Officer can ask anybody specified under section 22(1) and 22(2) to produce on a fixed date such accounts or documents as the Income-tax Officer requires, but cannot enforce production of accounts relating to a period more than 3 years prior to the previous year.

**Note :—**

(1) Failing to satisfy section 22 will be penalised by section 51.

(2) A notice can be issued under section 22(4) at any stage.

(3) In 1937-38 assessment, accounts can be summoned for the years ended 31st March, 1936, 1935, 1934; but

(4) Documents of any time can be called.

In the case *Gopi Nath Naik v. C.I.T. of U.P.*, it was decided that after a notice under section 22(2) has been issued the I.T.O. cannot make private enquiries as the proceedings are of a judicial nature. Sulaiman C. J. and Niamatullah J. held that the proceedings were governed by the Indian Evidence Act and Bajpai J. disagreed. In view of the decision private enquiries are inadmissible.

**Section 23.****23(1). Assess, if return is correct.**

If the Return made is correct the Income-tax Officer shall assess the total amount and determine the tax payable.

In *Rajendra Nath Mukherjee v. C.I.T., Bengal, 1934*, case, it was decided that there was no express provision limiting the time within which assessment must be made.

**23(2). If incorrect, the assessee to attend or to show evidence.**

If I.T.O. thinks the Return to be incorrect he shall serve on the person who made the Return a notice requiring him to attend or show evidence in support of his return.

**23(3). After evidence, assess.**

After hearing the evidence the Income-tax Officer shall assess by an order in writing.

**23(4). Best judgment assessment.**

When any Company or any person fails to make a Return or fails to produce books and documents or fails to show evidence in support of his Return, the Income-tax Officer shall make the assessment to the best of his judgment.

**Note:—**

(1) This assessment is resorted to in cases of default under sections 22(1), (2), (4) and 23(2).

(2) In case of above failure, such assessment is obligatory.

(3) There is no appeal against such an assessment. Assessee can only invoke section 27, *viz.*, for cancellation by the Income-tax Officer of such assessment.

**Section 23(4). Best judgment assessment.**

In *Laxminarain Badridas's* case (1937) their Lordships of the Privy Council have made certain observations for general guidance in the application of section 23(4). The duties of an Income-tax Officer have been laid down in this judgment in the following:—

“ He must not act dishonestly or vindictively or capriciously because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment and for this purpose he must, their Lordships think, be able to take into consideration local knowledge and repute in regard to the assessee's circumstances and his own knowledge of previous returns by, and assessments of, the assessee and all other matters which he thinks will assist him in arriving at a fair and proper estimate; and though there must necessarily be guess-work in the matter, it must be honest guess-work. In that case too, the assessment must be to some extent arbitrary. Their Lordships think that the section places the officer in the position of a person whose decision as to amount is final and subject to no appeal but whose decision if it can be shown to have been arrived at without an honest exercise of judgment may be revised or reviewed by the Commissioner under the powers conferred upon that official by section 33.”

In *Jot Ram Sher Singh v. C.I.T., U.P.* (1934), the Allahabad High Court observed:—

“ That it should be borne in mind that an assessment under section 23(4) should not be influenced by a desire to punish the assessee for non-compliance with a notice under section 22 or 23, however culpable such non-compliance may be. To furnish the assessee by a so-called best judgment assessment is wholly unwarranted.”

If an assessment has been made under section 23(4), which, by the way, is obligatory in case of non-compliance by the assessee of sections 22(1), 22(2), 22(4) and 23(2), the assessment will stand unless the assessee succeeds in satisfying the officer that :

- (1) he was prevented by sufficient cause from making the return under section 22, or
- (2) he did not receive the notice issued under section 22(4) or 23(2), or
- (3) he had not a reasonable opportunity to comply with the terms of notices under sections 22(4) and 23(2), or

- (4) was prevented by sufficient cause from complying with the terms of notices under sections 22(4) and 23(2).

It is perfectly true that the question whether the assessee was prevented by sufficient cause or not is always a question of fact. But in a recent case (Rajmani Devi's case, 1937) the Allahabad High Court has held that it may as well be a question of law in different circumstances, *viz.*, where the notice under section 23(2) was illegal the non-compliance with which resulted in an assessment under section 23(4). If the notice is illegal, the assessee can stand on it to prove "sufficient cause." The above Rajmani Devi's case is very important as it curtails the powers of the Income-tax Officer considerably. The Allahabad High Court has held that in section 23(2) the choice is with the assessee and not with the Income-tax Officer to decide whether he should attend the office or produce evidence. Hence in serving notice under section 23(2) if the Income-tax Officer does not give the assessee this choice the notice will be illegal. This view is very reasonable—the assessee knows best how to support his return most effectively.

In the case of Lucknow Sugar Works (1935), I.T.O. served a notice under section 22 on the limited Company. The Company having failed to comply, a best judgment assessment was made on an estimated income of Rs. 40,000. The Company was subsequently wound up and the Official Receiver disputed the I.T.O.'s claim. Justice Srivastava held that the I.T.O.'s assessment was binding, but the Official Receiver was entitled to call upon the I.T.O. to prove to the winding up court that the debt was valid. So far as the actual assessment was concerned, Justice Srivastava held: "These accounts show that the Company did not make any profit during the year. On the contrary it suffered a loss of Rs. 3,54,234-1-2. Under the circumstances the assessment is clearly unjustified and I am not prepared to treat the debt as valid or properly binding on the Company. The result is that I disallow the claim."

The Calcutta High Court in Keshardeo Chamaria's (1935) case made very important observations on "Best



Judgment assessment." According to this decision the following are the only questions that can be raised in an appeal against a decision under section 27 arising out of an assessment under section 23(4).

These are :—

Whether (1) the assessee was prevented by sufficient cause from making the return required by section 22; or whether (2) he received a notice issued under section 22(4) or 23(2); or whether (3) he had a reasonable opportunity to comply with the terms of the notices; or whether (4) he was prevented by sufficient cause from complying with the terms of the notices and that all these being questions of fact there can be no reference under section 66(2) or (3) from an order under section 23(4) or an appellate order under section 27.

**Valid Return:—**

The Return must be properly filled in. If the Return is not signed or if the Return contained the words "approximately," "roughly," "about" or such other expressions, the Return would be invalid.

If the Return is duly signed but income from all the sources have not been given it may still be a valid Return but incomplete Return.

If an Assessee deliberately fails to comply with the requirements of a Return it is invalid.

A Return must be verified either by the Assessee himself or by his duly authorised agent or representative. A Return should be made by

- (1) a partner of a firm,
- (2) the principal officer of a Company,
- (3) the Karta of the H.U.F.

**Section 22(4).**

- (1) Is a notice for a specific thing, *viz.*, Accounts or documents.
- (2) It can be issued at any stage (after 22(2) has been served).
- (3) It is optional by law though by practice it has become necessary (para. 88, I.T.M.).
- (4) Non-compliance of this notice will mean a prosecution under section 51.
- (5) " Or " in " Accounts or documents " has the force of " and."

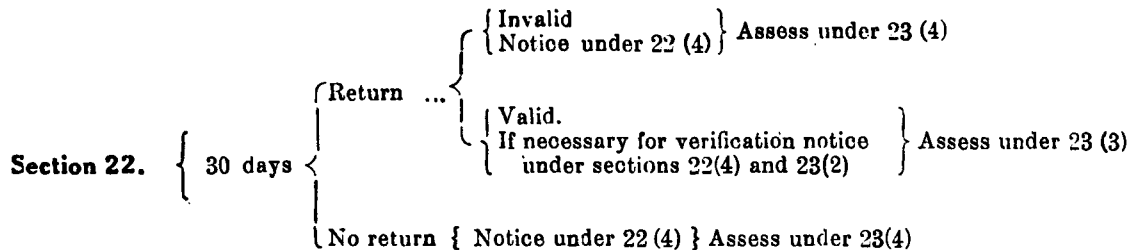
**Section 23(2).**

- (1) It is of general nature, *i.e.*, any evidence on which an assessee may rely in support of his return.
- (2) It pre-supposes a Return.
- (3) It is obligatory by law if I.T.O. thinks the Return to be incorrect or incomplete.

Any assessment will be illegal if assessee is not allowed this opportunity in case I.T.O. has any objection to the Return.

- (4) In the above, the points of objection need not be specified by I.T.O.
- (5) Income-tax Officer cannot ask for both assessee's attendance and production of evidence.
- (6) It is a very definite and necessary step for correcting and substituting a Return.
- (7) Non-compliance of this notice will not mean prosecution but assessment under section 23(4).

Order in which Income-Tax Officer works up to the actual assessment.



**Section 22(4).** Production of accounts or documents (if generally considered necessary).

**Section 23(2).** { Production of evidence  
or  
Personal attendance } if return is considered incomplete.

**Section 23A.**

It has been noticed that firms, companies or other associations of individuals carrying on any business are sometimes formed for the purpose of evading or reducing their liability to tax. This section with all its elaborate clauses is designed to bring within it such firms, companies, etc. In such a case the firms, companies and other association of individuals will not be taxed as such, but each member of the firm or association or company shall be taxed by determining the share of each member.

Sub-section (1) deals with firms and associations of individuals (except Hindu undivided family) and states that before they are brought within this section two conditions must be satisfied that

- (a) it is under the control of one member thereof,
- (b) it has been formed for the purpose of evading or reducing the liability of any member to tax.

Sub-section (2) deals with companies and states that before a company can be brought within this section the following conditions must be satisfied—

- (a) It is under the control of *not* more than 5 of its members.
- (b) Its profits and gains are allowed to accumulate beyond its reasonable needs.
- (c) The accumulation or failure to distribute is for the purpose of evading tax on profits accumulated or not distributed.
- (d) It is not a subsidiary company or one in which the public are substantially interested.

In spite of the elaborate provisions in this section Sir David Yule's estate escaped a huge amount of tax by turning the undistributed profits of the large number of

companies into Debentures. This section requires more careful drafting, so that such evasions can be stopped.

In *Harvey v. C.I.T.*, Madras, 1935, the I.T.O. contended that the Company's (Comorin Investment and Trading Co., Ltd.) profits were allowed to accumulate beyond its reasonable needs without being distributed among its members. The High Court held that the income-tax authorities were entitled to come to the conclusion that there was an intention to prevent the imposition of tax and to assess the shareholders under section 23A.

**Note:—**

Super-tax on Companies is at a flat rate but on individuals at graduated rates. It may mean much greater advantage to break up a business into several companies and thus considerably reduce liability.

### Section 24(1).

A loss under one head of income may be charged against profits under another in the same year.

(1) A has Rs. 2000 interest from securities and has incurred a loss from business in that year Rs. 3000. In this case his total income will be Rs. (-1000). Therefore he will not be taxed. Refund on Rs. 2000 at 26 pies must be given to A.

(2) A firm has :—

|  |                 |
|--|-----------------|
| (1) House Property (assessable income) | Rs. 3500        |
| (2) Interest from securities           | ... Rs. 4500    |
| (3) Loss from business                 | ... .. Rs. 7000 |

In this case, total income is Rs. 1000 (8000—7000). This Rs. 1000 will be taxed.

Refund on Rs. 4500 at 26 pies must be given to the firm.

### Section 24(2).

A registered firm has

|                                    |                |
|------------------------------------|----------------|
| House Property (assessable income) | Rs. 3500       |
| Income from securities             | ... .. ,, 4500 |
| Loss from business                 | ... .. ,, 9000 |

The total income is Rs. — 1000 (8000—9000).

Here the sub-section (2) gives a further concession and provides that the minus quantity can be utilised in reducing the personal assessment. Thus the minus quantity can be divided by the two equal partners and deducted from their personal income.

If one of the partners has a separate income of Rs. 7000, his total income will be

Rs. 7000

Rs. 500

---

Rs. 6500 to be taxed.

In the same way, the other partner may also set off his loss against profits and gains on any other head.

This advantage to the assessee cannot be nullified by contending that allowance for depreciation has resulted in a loss and that if a part of the allowance for depreciation be carried forward next year, the loss may turn into a profit thus barring the application of section 24.

In *South Indian Industrials, Ltd. v. C.I.T., Madras (1934)*, the Assessee Company carried on many businesses—tile works, cement works, rice mills, etc. It also held shares in other Companies carrying on similar business. In the particular year of assessment the company received large dividends from other companies and when the Income-tax Officer charged it to tax, the assessee claimed to set off a large amount of loss alleged to have been incurred in the various businesses so long conducted by the assessee and which stopped working about 5 years ago. No trade was done in the year of account in those businesses in respect of which the set-off was claimed. The Income-tax Officer contended that the assessee was not entitled to set off against dividends losses in business which ceased to be carried on. The assessee contended that so long as those businesses were not officially wound up, they would be supposed to be carried on.

The High Court decided that the assessee company was not entitled to set off the losses claimed.

In *Arunachalam Chettiar v. C.I.T., Madras, 1924*, the assessee carried on one business individually and the other as a member of an unregistered firm. It was decided that he was entitled to set off the loss incurred by him in respect of partnership against profits made by him in his individual business.

**Section 24A (1) & (2).**

In case of departure of a person out of British India without any intention of returning to India, the I.T.O. may serve a notice on him requiring him to furnish a return under section 22(2) and assess him during the financial year on the income of the period from the expiry of the last completed previous year to the probable date of his departure.

**Section 24B (1), (2) & (3).**

In case of death of an assessee, his Executor, Administrator or Legal Representative shall be liable to pay tax out of the estate of the deceased which would have been payable by him if he had not died.

If the person dies before a notice under section 22(2) or 34 has been served upon him, the I.T.O. may proceed in the usual manner by serving notice on the legal representative; or

if he dies after notice has been served on him but before furnishing the return or furnishing an incomplete or incorrect return, the I.T.O. may proceed in the usual manner against the legal representative.

**Section 25.**

This section deals with discontinued business, profession, vocation, etc. Discontinuance means complete stoppage.

Under the Act of 1918, tax at the rates fixed for any year was imposed on the income of that year as the basic principle of taxation. The principle has now changed and now the basis is that tax is imposed for any particular year on the income of the previous year. This change naturally leads to a difference in treatment with regard to businesses which were taxed under the Act of 1918. Hence in case of

- (1) business which never came under the Income-tax Act 1918 when discontinued, assessment may be made in that very year on the profits of that particular period so as to avoid any delay in making assessment of businesses that close down at any time of the year.

[It is to be noted that this assessment is in addition to the usual assessment for any year on the profits of the previous year.

It is again to be noted that the assessment of the broken period on the profits of that period in that very year is not obligatory. It is a matter for discretion.

Assessment for 1922-23 will tax profits of year ending December 1921. If the business is discontinued on 30th September, 1922, then profits of 9 months ending 30th September, 1922, will be taxed in 1923-24.]

- (2) business which came under the Income-tax Act, 1918, when discontinued no tax is payable for this broken period for the obvious reason that one year in the entire life of such a business must be left out as there has been twice taxation in the year when the basis of 1918 Act changed into the basis of the "Previous year" and further the business has the option of taking the profits of the broken period in place of the profits of the previous year.

*Illustration :*

Accounting year ends on 31st December. The business actually closes down on 30th September, 1922.

Ordinarily the assessment of 1922-23 will include profits of 31st December, 1921, but in such a case, *i.e.*, where the business was assessed under the Act 1918, the profits of 30th September, 1922, can be left out altogether



from taxation. Further the assessee may choose if it is convenient to him to score out profits of 31st December, 1921, and substitute in its place profits of 30th September, 1922, in the assessment of 1922-23.

This may mean a refund as assessment of 1922-23 has already been made but refund shall be allowed.

**Note:—**

Under section 25(1) and (2) only business, profession or vocation can be included. Companies assessable under section 12 cannot fall under this section.

**Section 25(2).**

Any person discontinuing any such business, profession or vocation shall give I.T.O. notice of such discontinuance within 15 days thereof.

Penalty equal to tax for the broken period.

**FORM C.**

*Form of appeal against an order under section 25(2).*

To

The Assistant Commissioner of Income-tax.

The \_\_\_\_\_ day of 19 .

The petition of \_\_\_\_\_ of \_\_\_\_\_ post office,

District sheweth as follows:—

1. Under section 25(2) of the Indian Income-tax Act, 1922, a penalty of Rs. \_\_\_\_\_ has been imposed on your petitioner. The notice of demand attached hereto was served upon him on \_\_\_\_\_.

2. Your petitioner was prevented by sufficient cause as more particularly explained below from giving notice within the time prescribed by section 25(2) to the Income-tax Officer of the discontinuance of his business, profession or vocation.

3. Your petitioner therefore requests that the order of the Income-tax Officer imposing a penalty of Rs. upon your petitioner may be set aside.

Signed

#### STATEMENT OF FACTS

##### *Form of verification.*

I, \_\_\_\_\_, the petitioner, named in the above petition, do declare that what is stated therein and in the above statement of facts is true to the best of my information and belief.

Signed

#### **Section 25A.**

Assessment after partition of a Hindu undivided family.

(1) Where at the time of making an assessment under section 23 it is claimed by or on behalf of any member of a Hindu family hitherto assessed as undivided that a partition has taken place among the members of such a family, the Income-tax Officer shall make such inquiry thereinto as he may think fit, and if he is satisfied that a separation of the members of the family has taken place and that the joint family property has been partitioned among the various members or groups of members in definite portions he shall record an order to that effect :

Provided that no such order shall be recorded until notices of the inquiry have been served on all the members of the family.

(2) Where such an order has been passed, the Income-tax Officer shall make an assessment of the total income received by or on behalf of the joint family as such as if no separation or partition had taken place, and each

member or group of members shall in addition to any income-tax for which he or it may be separately liable and notwithstanding anything contained in sub-section (1) of section 14, be liable for a share of the tax on the income so assessed according to the portion of the joint family property allotted to him or it and the Income-tax Officer shall make assessments accordingly on the various members and groups of members in accordance with the provisions of section 23 :

Provided that all the separated members and groups of members shall be liable jointly and severally for the tax assessed on the total income received by or on behalf of the joint family as such.

(3) Where such an order has not been passed in respect of a Hindu family hitherto assessed as undivided, such family shall be deemed, for the purposes of this Act, to continue to be a Hindu undivided family.

**Note** the words

(1) " Hindu family hitherto *assessed* as undivided  
.... "

(2) " Joint family property has been *partitioned* "

(3) " in *definite* portions."

In *Mittarchand Lakhmidas v. Commissioner of Income-tax, Punjab* (1937), the Lahore High Court held that this section applied only to those cases where the question involved was merely a case of disruption of a Hindu undivided family (as distinct from disruption followed by conversion into a company in which case section 26 will apply).

**Note** :—

This section will apply only if a member of a H.U.F. claims that it has become divided and there is no continuance of the business.

In *Ganga Sagar Ananda Mohan Saha v. Commissioner of Income-tax, Bengal*, a joint Hindu family (Dayabhaga law) consisting of 4 brothers had a business. After their death, the main business was carried on and their heirs established separate businesses of their own and also maintained separate establishments for about 15 years. It was decided that taking all the circumstances into account the joint family ceased to exist and the main business was assessable as an unregistered firm.

In *Biradhmal Lodha v. Commissioner of Income-tax, U.P.*, it was decided that where there was no formal partition of the joint family and merely a division of a *particular portion* of the joint family property among its members has taken place section 25A was not applicable. It was also decided that under section 25A it is not essential that there must be a division by metes and bounds.

In *Messrs Sher Singh Nathu Ram v. Commissioner of Income-tax, Punjab (1933)*, it was decided by High Court that 25A did not require division by metes and bounds but, that, while a mere disruption of the family was not sufficient, there must also be, by consent or otherwise, a definite ascertainment of the shares of the different members composing the family.

In *Kalu Mal Sheri Mal v. Commissioner of Income-tax, Punjab*, it may also happen that even after disruption of joint family, the joint family business can be continued. The question must be decided by the circumstances of each case. As there was no disruption of business, assessment as successor under section 26 was valid.

**Section 26(1).** Change in the constitution of a firm or where a new firm has been constituted.

This section refers to the constitution of the firm at the time of assessment. That is, it will be assumed that the firm had been constituted throughout the previous year as at the time of assessment and that the partners at the time of assessment had received shares of profits proportionate to their shares at the time of assessment.

Section 26(1) refers only to change in the constitution of a firm. Whether a newly made member has succeeded to the partnership just before the assessment or long before, does not matter. This member would be deemed, for income-tax or super-tax, to have received out of the profits of the previous year the share to which he

would have been entitled had his share been the same as in the assessment year.

### Section 26(2).

Where in the course of the year there has been a change of ownership of business (a registered firm succeeded by a company, an unregistered firm succeeded by a Registered firm, etc.) the assessment shall be made on the person succeeding as if he had been carrying on the business or profession throughout the previous year and as if he had received the whole of the profits for that year.

#### Note:—

(1) Where a H.U.F. breaks up and is converted into a company, this section will apply. (Mittarchand Lakhimdas v. C.I.T., Punjab, 1937.)

(2) This change of ownership, *i.e.*, transference may be effected by operation of law or by transfer *inter vivos*.

(3) It should not be supposed that the predecessor would be liable to pay tax up to the date of transfer and the successor from the date of transfer to the end of the year.

(4) The Act makes the person in possession liable leaving him to settle with his predecessor.

(5) Succession need not be in respect of every source of income of the predecessor. (Sind Light Railways v C.I.T., Bombay.)

(6) Transference of ownership of business by survivorship was not succession within the meaning of section 26(2). Therefore on the death of father the son will not be taxed under section 26(2). (Keshava Rao v. C.I.T., Madras, 1935.)

In *M. Sanjana & Co., Ltd. v. C.I.T., Bombay, 1926*, a Company after carrying on its business for some time went into liquidation and its business was then sold to another company which continued the business. It was decided that it was not discontinued—its ownership only was changed—hence it would come under section 26.

In *Ram Rekha Mal v. C.I.T.*, Punjab, 1937, the Lahore High Court has reaffirmed its previous decision given in *Mittarchand Lakhmidas's* case (page 98). It repeats that in case of disruption of a H.U.F. (*i.e.*, its business ceases to be) section 25A will apply. But in any other case, *viz.*, disruption followed by conversion or any kind of transformation, *i.e.*, in case it is continued as a reconstituted Firm or Company, section 26 will apply.

*Thontepu Chinna Pullayya v. C.I.T.*, Madras, 1937. This case was decided prior to *Ram Rekha Mal's* case and *Mittarchand's* case. The High Court held that where there has been a disruption of H.U.F. but exactly the same individuals form themselves into a firm, assessment should be made under section 25A. Section 26 will not apply as it is not a case of succession.

In *Jesingbhai Ugarchand v. C.I.T.*, Bombay, 1937, the Bombay High Court agrees with the Madras decision on the ground that "it is clearly not desirable that conflicting decisions under the Act . . . should be given by different High Courts . . ." forgetting for the moment that conflict was existing at that very time.

### Section 26A. Procedure for registration of Firms.

For income-tax purposes, a firm may be registered with the Income-tax Officer. The assessee shall make an application before the income of the firm is assessed for any year under section 23. The application should be made in the form below :—

*Form of application for registration of a firm under section 2(14) of the Indian Income-tax Act, 1922.*

To

The Income-tax Officer,

Dated . . . . . 19

$\frac{I}{We}$

beg to apply for

the registration of  $\frac{my}{our}$  firm under section 2(14) of the Indian Income-tax Act, 1922.

2.  $\frac{\text{The original}}{\text{A certified copy}}$  of the instrument of partnership under which the firm is constituted specifying the individual shares of the partners together with  $\frac{\text{a copy}}{\text{duplicate copy}}$  is enclosed. The prescribed particulars are given below.

3.  $\frac{I}{We}$  do hereby certify that the profits of the current year will be actually divided or credited in accordance with the shares shown in this partnership deed.

*Signature*

*Address*

| Name and address of the firm. | Names of the partners in the firm with the share of each in the business. | Date on which instrument of partnership was executed. | Date, if any, on which the instrument of partnership was last registered in the Income-tax Officer's office. | Remarks. |
|-------------------------------|---|---|--|----------|
|                               |   |   |  |          |

On production of the original instrument of partnership or on the acceptance of the I.T.O. of a certified copy, the I.T.O. shall enter in writing at the foot of the instrument or copy to the effect that the instrument has been registered up to 31st day of March, 193 .

**Note:—**

(1) A Hindu Undivided Family cannot be registered as a Firm.

(2) There cannot be a partnership between a Hindu Undivided Family and a firm. (Prabhu Lal Pearey Lal v. C.I.T., U.P., 1934.)

(3) One Firm cannot legally be a partner in another Firm (Jai Dayal Madan Gopal v. C.I.T., U.P., 1932)

referred to both registered and unregistered firm (Prabhu Lal Pearey Lal v. C.I.T., U.P., 1934).

### Section 27.

In case of failure to make a Return required by section 22 or in case of non-receipt of notice issued under section 22(4) or 23(2) or in case of there being sufficient cause preventing from complying with the terms of the above-mentioned notices, the Income-tax Officer may cancel the assessment and make a fresh one under section 23.

If the Income-tax Officer refuses to make a fresh assessment the assessee may appeal under section 30 in form A below :

#### FORM A.

*Form of appeal against an order refusing to reopen an assessment under section 27.*

To

The Assistant Commissioner of

The                              day of                              19

The petition of                              of                              post office,

District sheweth as follows :—

1. Under the Indian Income-tax Act, 1922, your petitioner has been assessed on the sum of Rs.                              for the year commencing the 1st day of April 19

2. Your petitioner was prevented by sufficient cause from making the return required by section 22 or did not receive the notice issued under sub-section (4) of section 22, or sub-section (2) of section 23, or had not a reasonable opportunity to comply or was prevented by sufficient cause from complying with the terms of the notice under sub-section (4) of section 22 or sub-section (2) of section 23, as more particularly specified in the statement attached.



3. Your petitioner therefore presented a petition to the Income-tax Officer under section 27, requesting him to cancel the assessment. This petition, the Income-tax Officer, by his order dated \_\_\_\_\_ of which a copy is attached, has rejected.

4. Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and that he may be directed to make a fresh assessment in accordance with the law.

Signed

### Section 28.

If the Income-tax Officer or Assistant Commissioner or Commissioner is satisfied that an assessee has concealed any particulars of his income or has given deliberately inaccurate particulars and thereby shown a smaller income he will impose a penalty in addition to the income-tax payable by him.

If the profits of a registered Firm have been shared otherwise than in the Partnership Deed and that has resulted in the reduction of the total income of a partner, a penalty will be imposed in addition to the income-tax payable. In such a case no refund can be claimed by any other partner.

Appeal against this is in Form D under section 30.

### FORM D.

*Form of appeal against an order under section 28.*

To

The Commissioner of Income-tax.  
The Assistant Commissioner of Income-tax.

The \_\_\_\_\_ day of \_\_\_\_\_ 19 .

The petition of \_\_\_\_\_ of \_\_\_\_\_ post office,

F. 14

District sheweth as follows:—

1. Under section 28 of the Indian Income-tax Act, 1922, a penalty of Rs. \_\_\_\_\_ has been imposed on your petitioner by the Income-tax Officer  
Assistant Commissioner. The notice of demand attached hereto was served upon him on \_\_\_\_\_

2. Your petitioner did not conceal the particulars of his income or deliberately furnish inaccurate particulars thereof but as will be seen from the statement of facts attached returned it at its real amount to the best of his knowledge and belief.

3. Your petitioner therefore requests that the order of the Income-tax Officer  
Assistant Commissioner imposing a penalty of Rs. \_\_\_\_\_ upon your petitioner may be set aside.

Signed \_\_\_\_\_

#### STATEMENT OF FACTS.

##### *Form of verification.*

I, \_\_\_\_\_, the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed \_\_\_\_\_

#### STATEMENT OF FACTS.

##### *Form of verification.*

I, \_\_\_\_\_, the petitioner, named in the above petition, do declare that what is stated therein and in the above statement of facts is true to the best of my information and belief.

Signed \_\_\_\_\_

## FORM B.

*Form of appeal against assessment to Income-tax.*

To

The Assistant Commissioner of

The                      day of                      19 . . .

The petition of                      of                      post office,

District sheweth as follows:—

1. Under the Indian Income-tax Act, 1922, your petitioner has been assessed on the sum of Rs.                      for the year commencing the 1st day of April 19 . . . The notice of demand attached hereto was served upon him on                      .

2. Your petitioner's income accruing or arising or received or deemed under the provisions of the Act to accrue or arise or to be received in British India for the year ending the                      day of 19                      amounted to Rs.                      .

3. Such income and profits actually accrued or arose or were received during the period of                      months and                      days.

4. During the said year your petitioner had no other income or profits.

5. Your petitioner has made a return of his income to the Income-tax Officer                      under section 22, sub-section (2) of the Act and has complied with all the terms of the notice served on him by the Income-tax Officer under section 23(2), and/or [section 22(4)].

Your petitioner therefore prays that he may be assessed accordingly (or that he may be declared not to be chargeable under the Act).

Signed

Note:—

|  |     |     |         |
|--|-----|-----|---------|
| Appeal against a refusal of I.T.O. to make a fresh assessment under section 27 | ... | ... | Form A. |
| Appeal against an order under section 25(2)                                    | ... | ..  | C.      |
| " " " " " 28   | ... | ..  | D.      |
| All other appeals  | ... | ... | .. B.   |

**Section 29.**

When the tax payable is determined the I.T.O. shall serve on the assessee a notice of demand in the prescribed form.

The Notice of Demand under section 29 shall be in the following form:—

**NOTICE OF DEMAND UNDER SECTION 29 OF THE  
INCOME-TAX ACT, 1922.**

To

1. You have been assessed for the year        to income-tax amounting to Rs.                    [in addition to which a penalty of Rs.                    has been imposed], as shown in the copy of the assessment form sent herewith.

2. You have also been assessed to super-tax amounting to Rs.                    .

3. You are required to pay the amount of Rs.                    on or before the                    to                    at                    when you will be granted a receipt.

4. If you do not pay the tax on or before the date specified above, you will be liable to a penalty which may be as great as the tax due from you.

5. If you are dissatisfied with your assessment you may present an appeal under sub-section (1) of section 30 of the Indian Income-tax Act, 1922, to the Assistant Commissioner of Income-tax at                    within 30 days from the receipt of this notice, on a petition duly stamped in the form prescribed under sub-section (3) of section 30 and verified as laid down in that form.

*Or*

The assessment has been made under sub-section (4) of section 23 of the Indian Income-tax Act, 1922, because you

failed to make a return of your income under section 22  
to comply with a notice under sub-section (4) of section 2 , and no  
to comply with a notice under sub-section (2) of section 23

appeal lies. But if you were prevented by sufficient cause from making the return or did not receive the notice(s) aforesaid, or had not a reasonable opportunity to comply, or were prevented by sufficient cause from complying, with the terms of the notice(s), you may apply to me within one month from the receipt of this notice under section 27, to cancel the assessment and proceed to make a fresh assessment.

6. The appropriate chalan should be sent along with the amount paid. Should you lose the chalans attached to this notice of demand, it will be necessary for you to apply to the Income-tax Officer for copies of fresh chalans.

*Dated*

19

*Income-tax Officer.*

*Place*

*Note.*—The superfluous words in paragraph 5 should be deleted.

**Note:**—

A demand notice should be sent even if no demand has been made. This is to give an opportunity of appeal (para 101. I.T.M.)

### **Section 30.**

Any assessee may appeal to the Assistant Commissioner against assessment made under section 23 against his liability to tax, under section 27 against Income-tax Officer's refusal to make fresh assessment, against any order under sections 25(2), 25A and section 28.

**Note:**—

(1) There is no appeal against section 23(4).

(2) The appeal shall ordinarily be presented within 30 days of receipt of the notice of demand relating to the assessment or penalty objected to or of the intimation of the refusal to register a Firm under section 26A or of the date of the refusal to make a fresh assessment, but the Assistant Commissioner may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(3) In Behari Lal Rám Chandra's case (Oudh, 1937), it was decided that additional grounds may be filed by the appellant and entertained by the Assistant Commissioner in exercise of his discretion any time before the appeal is decided.

### Section 31.

(1) Assistant Commissioner shall fix a day and place for the hearing of the appeal.

(2) Assistant Commissioner before disposing of the appeal may make further enquiry.

(3) In disposing of an appeal, Assistant Commissioner may

(a) confirm, reduce, enhance, annul the assessment, or

(b) set aside the assessment and direct the Income-tax Officer to make a fresh assessment, or

(c) in the case of an order refusing to register a firm under section 26A or to make a fresh assessment under section 27, confirm such order or cancel it and direct the Income-tax Officer to register the Firm or make a fresh assessment, or

(d) in case of an order under section 25(2) or 28, confirm, cancel or vary such order.

**Note:—**

Assistant Commissioner, when hearing the appeal, cannot assess a source of income which was not assessed at all by the Income-tax Officer. (*Jagernath Therani v. C.I.T., Bihar.*)

No appeal lies against the appellate orders of the Assistant Commissioner except where there has been

- (1) enhancement of assessment, or
- (2) penalty imposed under section 28.

Otherwise the assessee's remedies are

- (1) petition to the Commissioner (section 33).
- (2) reference to High Court (section 66) if a question of law is involved.

Assessee's appearing before Assistant Commissioner is not essential for Assistant Commissioner's decision. A.C. should consider the appeal on its merits and take the decision.

**Section 32.**

An assessee can appeal to Commissioner against A.C.'s decision given under section 28 or enhancement of assessment under section 31(3) within 30 days of the date on which he was served with notice.

Rule 22 gives the form (E) in which appeal against A.C.'s decision taken under section 31(3) should be made.

Form C should be adopted where an appeal against decision taken under section 28 is to be made.

There is no appeal against Commissioner except in the form of a reference to the High Court on a point of law.

**Section 33.**

The Commissioner may revise the records of any proceeding under this Act taken by any authority subordinate to him.

The Act does not, by its wordings, contemplate petition. But revision petitions have become a part of the practice.

“An order under section 33, merely declining to interfere is not an order ‘prejudicial to the assessee.’” (I.T.M.).

### Section 33A.

Where an Income-tax Officer has assessed under section 23A (*i.e.*, assessing against evading or reducing liability) any assessee (except Hindu Undivided Family) can lodge an appeal with the Commissioner within 30 days of the date on which he was served with a notice under section 23A.

The Commissioner shall refer such appeal to a Board of Referees with his own opinion. Before reference the Commissioner can also decide under section 33, but it will be up to the Appellant to proceed further or withdraw his appeal.

The decision of this Board is final. Commissioner cannot revise it. It can however be referred to High Court.

*The Composition of the Board* :—Not less than 3, and not more than 5, persons of whom not less than one-half shall be non-officials having business experience and one shall be a judicial officer not inferior in rank to a subordinate judge or small cause court judge with not less than 10 years’ judicial experience.

### Section 34.

This section charges an income which has escaped assessment or which has been taxed at too low a rate.

**Note** :—

(1) Income-tax Officer must *serve* notice of proceedings of assessment within one year of the end of that year in which it has escaped assessment.



(2) If any item is alleged to have escaped assessment in the assessment year 1936-37, *i.e.*, within the previous year, say, the Revenue Account ending 31st March 1936, then I.T.O. can start proceedings within 31st March 1938.

(3) As wide powers have been given to the Income-tax Officers they must, of necessity, know accounts thoroughly well and they should have the patience and ability to go into imperfect and complicated accounts. The I.T.O.s are not within their competence to question the procedure of keeping accounts—particularly mercantile. If, because of their lack of power of scrutiny and understanding, some items have been allowed as a charge, it is not permissible at a later stage to question their own decision. Such change of decision is likely to affect the assessee prejudicially.

(4) It refers to income which escaped assessment. This section does not give a general power of review. Nobody other than Income-tax Officer can initiate proceedings. The detailed grounds on which assessment is reopened need not be mentioned in the notice.

(5) Assessment need not be completed within the year. (Kedarnath Kesrilal *v.* C.I.T., Bengal, 1931.)

(6) “ He cannot reopen the original assessment as a whole.” (Rajendra Narain Deo *v.* C.I.T., Bihar.)

(7) Section 34 cannot be served merely on vague suspicion. Accordingly to be on the safe side, item alleged to have escaped assessment should be specified by I.T.O.

(8) “ Still less is it intended that the I.T.O. should be invested with wide powers of revision or review merely because he has formed a mistaken impression that certain income has escaped assessment or been assessed at too low a rate. His powers under section 34 can never be used, therefore, to effect a reduction of tax already levied.” (I.T.M.)

In the Anglo-Persian Oil Company's case Chief Justice Rankin observed, "I see no way of holding that section 34 is inapplicable to put right an assessment by which a deduction has been improperly allowed. Such a case in my opinion is a case of income escaping assessment—not the whole income of the assessee but a part of it escaping assessment and there is nothing in section 34 which limits it to cases of non-disclosure by the assessee or discovery of new matter by Income-tax authorities or inadvertence as distinguished from erroneous deliberations on the part of those authorities.

Justice Panckridge's observations in the North British Insurance Co.'s case regarding section 34 should be read with interest. (Page 174).

In *Rajendra Nath Mukherjee, v. C.I.T., Bengal*, it was decided that where a return of income is filed within tax year but an assessment is not made on the income within the tax year, it cannot be said that the income has escaped assessment and that the word "assessment is" not confined in the statute to the definite act of making an order of assessment.

Held further, that the fact that section 34 requires a notice to be served calling for a return of income which has escaped assessment strongly suggests that income which has duly been returned already for assessment cannot be said to have escaped assessment; in other words income can be said to have escaped only *after* assessment has been made—not during the pendency of assessment.

In *Dewan Kishen Kishore v. C.I.T., Punjab*, the High Court held that 'escaped assessment' referred to cases which did not come to the notice of the Income-tax Officer. But in a later case in *Amir Sher Singh v. C.I.T., Punjab*, the same High Court decided to include any case of non-assessment whatever might have been the cause—even where a predecessor officer made a wrong application of the Act.

In *Ramjidas Mahaliram, v. C.I.T., Bengal (1936)*, Justice Mcnair observed, "In section 34, no such (*viz.*, "in the I.T.O.'s opinion," "if I.T.O. is satisfied," "has reason to believe," *etc.*) discretion is allowed. What is contemplated is that some item liable to tax has in fact escaped taxation and only when that fact is in existence may the income-tax authorities use their powers to reopen an assessment which has already been closed."

## Section 35.

This section gives power for rectification of mistakes.

"The power conferred upon the Commissioner or Assistant Commissioner or Income-tax Officer by section 35 to rectify a mistake, whether on his own motion or on the application of the assessee, is confined to the rectification of mistakes patent from the facts or documents which were before him when he passed his revisional, appellate or original assessment order as the case may

be. This section does not confer on officers a general power of review or authorise any assessee to introduce any new facts in connection with the said assessment. An Income-tax Officer should not correct mistakes in cases that have been dealt with by the Assistant Commissioner on appeal or the Commissioner in revision without a reference to the A.C. or the Commissioner as the case may be." (I.T.M.)

**Note:—**

(1) Orders under this section cannot be appealed against. This section is for correction of mistake and not for revision of his order.

(2) In case a mistake is detected in the revenue account ending 31st March, 1936, *i.e.*, in the assessment year 1936-37 and assuming that the notice of demand was served on 10th June, 1936, then the I.T.O. is required to complete rectification by 9th June, 1937.

(3) If rectification involves enhancement of assessment, previous notice must be given to the assessee.

### **Section 36.**

Tax will be calculated to the nearest anna.

### **Section 37.**

This section gives Income-tax Officer, Assistant Commissioner and Commissioner the powers of a court or a judge for the purposes of

- (a) enforcing the attendance of any person and examining him on oath,
- (b) compelling the production of documents, and
- (c) issuing commissions for the examination of witnesses.

The penalty for disobeying is the same as for the summons issued by a civil court.

### **Section 38.**

Income-tax Officer or Assistant Commissioner will have the power to call for certain information from any

individual, firm, Hindu undivided family, trustee, guardian, agent, etc.

### Section 39.

The Income-tax Officer or Assistant Commissioner or any person authorised by them will have the power to inspect the register of members of any company.

### Section 40.

If Guardian (of a minor)

Trustee (of a lunatic or idiot)

Agent (of any person residing out of British India)

receive any income on behalf of the above-mentioned beneficiaries then tax shall be levied upon the Guardian, Trustee and Agent.

### Section 41.

If Courts of Wards, Administrator-General, Official Trustee, Receiver or Manager appointed by or under any order of a Court receive income then tax shall be levied upon the Court of Wards, Administrator-General, etc.

Income from properties or securities, etc., held under Trust. (Sections 40 and 41.)

Where any "property" (in the widest sense, but excluding a business) is held under Trust, the owner of that property, for the purposes of the Income-tax Act, is the beneficiary and the income is the income of the beneficiary. The Act does not permit of double taxation in the case of Trusts, *viz.*, once in the hands of a trustee and again in the hands of a beneficiary. Under these sections, the guardians, trustees, agents, Courts of Wards, etc., are required to pay tax on income, profits or gains received by them on behalf of beneficiaries in the same manner and to the same amount as the beneficiaries themselves.

The following instructions should be followed in the assessment of such income:—

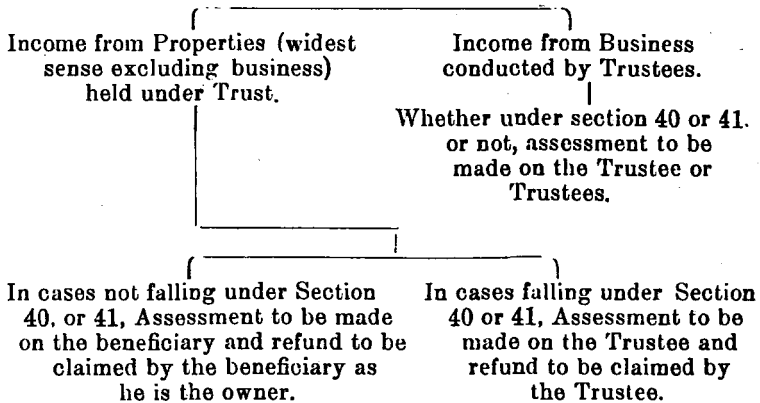
(A) *In cases not falling under section 40 or 41*, the Trustee is merely to be regarded as an Agent. Receipt (actual or notional) of the income by him, or accrual of the income to him, is equivalent to receipt by or accrual to the beneficiary. Whether

the income be distributed or allowed to accumulate, the beneficiary is to be assessed in respect of it. There is no provision for taxing the Trustee in respect of it. The beneficiary may, of course, apply for any refund that may be due. The Trustee cannot do so.

(B) *In cases falling under section 40 or 41*, the position is the same except that the Act here provides for recovery of the tax from the Trustee. (a) *Where the Trustee holds the entire property in the widest sense of the beneficiary*, the assessment should be made on the Trustee, the tax will be recovered from him and he may apply for refunds. The assessment will be made as though the income from the trust property were the total income of the Trustee. The assessment will of course be quite distinct from that on any other income in respect of which the same person may be Trustee and from that on the Trustee's own individual income. (b) *If the Trustee does not hold the entire property of the beneficiary*, the assessment on the total income of the beneficiary will be made in the name of the beneficiary and the tax in respect of so much of the income as is received by the Trustee will be recovered from the Trustee, who may also apply for any refund due in respect of such part of the income, which refund will be calculated with reference to the total income of the beneficiary. These instructions are equally applicable alike (a) where the Trustee simply receives dividends, interest on securities or other income on behalf of, and pays such income to, the beneficiary, and (b) where he receives dividends, interest, or other income on behalf of the beneficiary and pays a *fixed sum* out of the income to the beneficiary. If the balance of such income accumulates for the benefit of the beneficiary, it is to be regarded as his income of the year in which it accrues or arises to or is received by the assessee.

**INCOME FROM BUSINESS CONDUCTED BY TRUSTEES.**—*Where a business is conducted by a Trustee or Trustees on behalf of beneficiaries*, the assessment is to be made on the Trustee or Trustees conducting such business, whether section 40 or 41 is applicable or not. If there are *Trustees*, they should be treated as an association of individuals (see judgment of the High Court, Lahore, in *Hotz Trustees versus Commissioner of Income-tax, Punjab*, Reference No. 8 of 1930). The tax will be assessed on and recovered from the Trustee. In the hands of the beneficiary or beneficiaries, the income of a business thus conducted by Trustees will not be taxed again. [Section 14(2) (c).] It will, therefore, be treated exactly as though it were a share of the profits of an unregistered firm. Its inclusion in his total income may raise the rate of tax leviable on the remaining income of a beneficiary or render that income liable to super-tax. The Trust income in the hands of the beneficiary should not *itself* be subjected to super-tax a second time, if it has borne super-tax in the hands of the Trustees, though legally it is liable to be so subjected. Similarly, where the income of a Trust is from sources other than business and the trustees are assessed to Income-tax and Super-tax

on the total income of the trust, super-tax should not be levied a second time on what a beneficiary might get from that income as his share. If such a business is conducted by a single Trustee, the same principles will be applied. (I.T.M.)



**Note:—**

(1) Such Assessment in the hands of the Trustee should be quite distinct from (a) his own personal assessment on firm, (b) income arising from other trust of which he may also be trustee.

(2) Cases other than those covered by section 40 or 41 are:—

Trustees for Debenture-holders.

Trustees under a Will.

Trustees under a Deed.

(3) Where the Trustee is assessed to S/T, the share of the same income when brought into the beneficiary's personal assessment should not be subjected to S/T again, though the Act does not give any exemption.

(4) Agents are in receipt of profits.

In *Mrs. Saldhana v. C.I.T.*, Madras, on the death of Mr. Saldhana, the widow became the guardian of her minor children and she carried on the estate of the deceased consisting of coffee plantations, house properties and a firm. The widow was getting one-third share and the children two-thirds from the firm. It was decided that a single assessment should be made on the widow on the entire income derived from the business carried on by her. Thus, assessment was made under section 10(1)—section 40 is not a bar to such an assessment.

Sections 40 and 41 are not charging sections but only enabling sections, so that trustees and guardians can be assessed if the Income-tax Officer so chooses.

In *Hotz Trust of Simla v. C.I.T.*, Punjab, the trustees under a testamentary disposition deed of trust carried on the business of the testatrix. The beneficiaries were only entitled to a specified share of profits and were not competent either to hypothecate their interest or sell it to any outsider. The trustees were assessed as an association of individuals. It was decided that the assessment was in order and that section 40 was a machinery section for the collection of tax in special cases and had no bearing on such a case as the trustees were liable to be assessed in respect of the hotel business under the general provisions of the Act.

**Section 42(1).** A case covered by the word "deemed" in section 4(1).

Owner resides out of British India but earns profits directly or indirectly through or from any business connection or property in British India; such profits will be deemed to be income arising in British India. This section charges the agent of such a person and the agent is the assessee for income-tax purposes.

**Note:—**

(1) Property is used in the widest sense.

(2) It has to be seen whether business connection exists (business connection will not be established merely by a relationship of a debtor and creditor).

(3) The object of section 42 is to catch profits not received in British India.

(4) *Rule 33.* In any case in which the Income-tax Officer is of opinion that the actual amount of the income, profits or gains accruing or arising to any person residing out of British India whether directly or indirectly through or from any business connection in British India cannot be ascertained, the amount of such income, profits or gains for the purposes of assessment to income-tax may be calculated on such percentage of the turnover so accruing or arising as the Income-tax Officer may consider to be reasonable, or on an amount which bears the same proportion to the total profits of the business of such person (such profits being computed in accordance with the provisions of the Indian

Income-tax Act) as the receipts so accruing or arising bear to the total receipts of the business, or in such other manner as the Income-tax Officer may deem suitable.

(5) Section 42 does not contemplate the Agent to be in actual receipt of money unlike sections 40 and 41, where Agents should be in receipt of income.

### Section 42(2).

Non-residents (a) who are not British subjects, or (b) who are not a firm or company constituted within H. M.'s dominions or a branch thereof,

when carry on business with a resident in British India and manage things in such a way that by keeping the resident agent almost a dummy, show a very small profit, then

reasonable profits should be calculated and charged to tax on the resident person.

This section prevents a subsidiary Indian firm or company from benefiting by such an arrangement by the parent body in a foreign country.

This section is not applicable where the parent firm or company is constituted within H. M.'s dominions (excludes Native States).

This section allows the Income-tax Officer to assess the Indian profits on an amount which may be deemed reasonable. In case the Income-tax Officer considers desirable he may calculate on the basis of percentage on turnover or other suitable method under rule 34.

### Section 42(3).

The profits in respect of sale in British India of any merchandise exported to British India from any place



outside British India shall be deemed to have accrued and arisen and to have been received in British India.

No business expenditure will be allowed from such profits except amounts actually spent.

In *Currimbhoy Ebrahim & Sons, Ltd. v. C.I.T., Bombay* (1933), the assessee company carried on its business in Bombay. It obtained a loan of 50 lacs from the Nizam of Hyderabad and undertook to pay interest and capital in Hyderabad. In a particular year, the company paid to the Nizam's account Rs. 3 lacs by way of interest on loan. The Income-tax Officer treated the assessee company as Nizam's agent and assessed on Rs. 3 lacs under section 42(1).

The High Court held that the assessee company was not the agent and that there was no business connection of the Nizam. On appeal, the Privy Council decided that (1) the interest income did not arise or accrue to the Nizam within British India at all and was therefore not liable to tax; (2) the order as to the assessee company being the agent of the Nizam was invalid; and (3) hence the question under section 43 did not arise; (4) property had the widest meaning; (5) assessment in respect of Nizam's house property in Bombay was illegal as tax had already been paid by the person managing the property for the non-resident Nizam.

In *C.I.T., Burma v. Steel Bros. Co., Ltd.* (1926), the company was registered in England. It was carrying on large business operations in Burma and goods were shipped to London in raw state and then they were sold in London market. It was decided that though the produce was sold in London and money was received there still under section 42(1) read with section 4(1) the profits were deemed to accrue or arise in British India and hence taxable.

In *Secretary, Board of Revenue (Income-tax), Madras, v. the Madras Export Company*, a French Firm set up a branch business in Madras. Its business was to buy leather goods and send them to France. The French Firm charged a fixed rate of commission and thus made profits on goods sent. It was decided that the income or profits made by the French Firm was not taxable.

In *C.I.T., Bombay, v. Bombay Trust Corporation, Ltd., 1930*, The Bombay Trust Corporation, used to take loans from Hongkong Trust Corporation and to remit sums of money to the Hongkong Trust, being interest on loan. The Income-tax Officer served a notice on the Bombay Trust Corporation as agent of the Hongkong Company under section 43. It was decided by the Privy Council that interest was profit to Hongkong Company residing out of British India, but earning profits from business connection in British India. The Hongkong Company being in receipt of the income through the Bombay Company was assessable. It was also decided that although the term 'agent' in section 42 as it

stood alone would mean an agent in actual receipt of the profits, yet section 43 puts the person who comes within its terms artificially into the position of the agent and assessee under section 42.

In *C.I.T., Bombay v. Remington Typewriter Co. (Bombay), Ltd., Remington Typewriter Co. of New York* had branches in three places in India. The Remington Typewriter Co. (Bombay), Ltd., was registered at Bombay. The American Company held all the shares of the Bombay Company except three which were held by the nominees. The Bombay Company was assessed to income-tax as agent of the American Company in respect of (1) profits made by the American Company upon its sales of machines to Bombay Co., (2) dividends paid by Bombay Co. to the American Company. The Bombay High Court held that though the Bombay Company was to be regarded as an agent of the American Company under section 43, it was not assessable as it was not in receipt of profits.

The Privy Council reversed the decision and decided that any person who comes within the terms of section 43 is put by that section artificially into the position of agent and assessee under section 42(1).

In *Rogers Pyatt Shellac & Co. v. Secretary of State for India (1925)*, an American Company had a branch office in Calcutta to buy gum, shellac and other Indian products and had a factory in U.P. All sales were made in America. The Company was assessed to tax in India. There being a manufacturing branch it was decided that income would be taxable.

In *Pondicherry Railway Co., Ltd. v. C.I.T., Madras (1931)*, Pondicherry Co., Ltd., registered in England owned a railway in Pondicherry and entered into an agreement with S. I. Railway for working the line. It was paid profits at their office in Trichinopoly (British India) from where the agent remitted the profits to London (the Agent of the Pondicherry Co. being the same as the Agent of S. I. Railway).

It was decided by Privy Council that income derived by the Pondicherry Company from payments made by S. I. Railway Co. and received by the Agent of the Pondicherry Co. constituted profits of a business carried on by the Company and hence assessable.

Important instructions from the I.T. Manual on section 42:—

(1) *Indian firms allied to non-resident firms of which they are not technically either branches or agencies* often succeeded in the past in escaping their proper taxation by a manipulation of accounts with the parent non-resident companies. To cite an example, a foreign firm dealing in aniline dyes was registered as a separate limited liability company in India with a capital of Rs. 20,000. The shares were never placed on the market in

India, but, with the exception of small holdings by managers in India, were all held abroad. The registered capital was nominal in comparison with the value of the stock-in-trade and the parent company abroad sold to the subsidiary Indian company at a price leaving a margin just sufficient to cover the expenses of the subsidiary company, or causing an actual loss to be shown. Section 42(2) of the Act is designed to prevent a subsidiary Indian firm or company from benefiting by such a manipulation, and enables an Income-tax Officer to assess it on the profits which may reasonably be deemed to have been derived from its Indian business, while, where any difficulty is experienced in arriving at a basis for assessment, assessment on a percentage of turnover, or other suitable method can be adopted under rule 34. It is to be noted that the provisions of section 42(2) are not applicable where the parent non-resident firm or company is constituted within the British Empire and that the liability to assessment is placed on the subsidiary Indian firm as a principal and not as an agent.

(2) *Indian agents of non-resident firms of which they are not technically either branches or subsidiary firms* are liable for the payment on account of their principals, of the tax on their principals' Indian profits under the provisions of sections 42(1) and 43 of the Act. It will be observed that these provisions permit the levy of the tax on a non-resident's business not only where he has established a regular *agency* in India but also where he conducts his business regularly through a particular *agent* or casually through various *agents*. In this case it is not necessary that anything of the nature of a regular *agency* should exist in order to make the profits of a non-resident chargeable in the name of an agent. They are so chargeable even when the only connection between the non-resident and the person acting as his agent is that that person is ordinarily and regularly employed as an agent by the non-resident. The Government of India do not, however, desire that in practice the liability to assessment should be enforced except where something definitely of the nature of an agency exists and in particular no attempt should be made to tax the profits of a *consignment business pure and simple*, merely because the non-resident consignor habitually uses a particular resident as his agent.

In all cases it will be a question of fact whether the connection between the non-resident and the resident is such that an agency can be held to exist. "Agency" for the purposes of this section should be interpreted to mean a regular, not casual, agent and one whose relation to the non-resident principal is such that the principal may reasonably be held to be trading "in the country" and not merely "with the country." If, for example, there is no privity of contract between a foreign principal and a resident who purchases the foreign principal's products through another resident or if the resident vendor has to bear any bad debts arising out of such transactions, the resident vendor is not to be treated as the agent of the non-resident. Even if a non-resident does not bear bad debts, he will be considered to be

trading in the country (*if there is privity of contract*) if the agent receives a *del credere* commission, i.e., an additional commission in consideration of guaranteeing the non-resident against bad debts, or if the rate of commission is so unusually high as evidently to be intended to include a *del credere* commission though none is specifically mentioned. It is doubtful whether it is practicable to formulate for the guidance of Income-tax Officers any more definite principles than those stated above; but the following examples may serve to indicate the lines on which decisions should be reached:—

- (a) B, a distiller in Glasgow, has agreed to sell to no one in India except A, his Agent, provided that A gives B all or an agreed proportion of his trade. A purchases from B and sells to the trade at his own rates, and all bad debts are A's. No attempt should be made to tax B on his profits. His position, in spite of his supplementary agreement with A, is merely that of a seller to an Indian consignee who takes the risks or profits of the trade in India.
- (b) A, an Indian resident and a large supplier of mill stores, has a monopoly for the sale in India of the belting of a non-resident B. A is paid commission by B on all orders he sends either for his own stock or risk or in execution of orders obtained. He does not confine his purchases of belting to B. He stands all loss from bad debts and fixes the prices to be asked for the goods. Here again the position of B is merely that of a seller to an Indian consignee and no attempt should be made to tax B's profits.

The section 42 is one of the most outstanding sections of the Income-tax Act. It is designed for a special purpose of catching profits arising from non-residents' business in India carried on under organisational devices but the ambiguity in the wordings of the section partially defeats the purpose. The section appears as if all types of cases can be brought within it and the section by the expressions "directly or indirectly" seems to confer wide powers in the hands of the I.T.O. but on a perusal of the elaborate instructions and the cases cited in the Manual, it will be found otherwise.

It is difficult to see *how* from the wordings of the section it follows that consignment business carried on by a non-resident can be exempted. It is equally difficult to

follow as to *why* consignment business is beyond the scope of this section. Consignment business should be within the purview of this section as the ownership and control of the business property and stock rest with the non-resident and as such he should be deemed to be trading *in* India. It should be exempt from the operation of this section where the Agent in India can prove that his stock has been purchased *outright* in U.K. and therefore the non-resident has no trading connection with India.

It is difficult to follow the subtle distinction between (1) trading *in* the country and (2) trading *with* the country. The Act ought to have clearly stated as to when a business is to be *deemed* trading in the country and trading with the country.

Some time a non-resident company, say, Thornton Co., Ltd., sets up a Thornton (India) Co., Ltd., in India. The latter is a separate entity for legal purposes and in some instance it has been seen that when they make purchases from their parent company in foreign countries, the invoices are heavily loaded with the bulk of anticipated profit leaving a very small margin of profit to accrue in India. When the accounts of Thornton (India), Ltd., will be examined, probably a small profit or some loss will be shown. Leaving the Indian assessee, the I.T.O.'s next step should be to catch the non-resident company but many such companies will escape either by showing (1) that it carries on *consignment business pure and simple* or (2) that *outright* sale was effected in foreign country and as such it is neither directly nor indirectly carrying on any business in India.

It is suggested here that (1) all non-resident and foreign companies be treated alike for Income-tax purposes, (2) a clear definition of trading *in* or trading *with* India be given, (3) a clear provision by which agency can

be definitely established be given in the Act as it is thought that the cases cited in the Income-tax Manual are wholly inadequate and unconvincing.

### **Section 43.**

This section states the three classes of persons who should be deemed as agent for income-tax purposes provided the I.T.O. serves on him a notice with the intention of treating him as an agent:

- (1) Person employed on behalf of the non-resident.
- (2) Person having business connection with him.
- (3) Person through whom such non-resident person is in receipt of income.

### **Note:—**

(1) Section 43 refers to persons having business connection with non-residents and the section says nothing as to their being in receipt of profits.

(2) The proposed agent must be given an opportunity of representing his views before an assessment order can be made.

(3) Notice under section 43 making a person liable as agent need not be served year to year. It is up to the agent to inform the Income-tax Officer if any change has taken place.

### **Section 44.**

The partners of a firm will be jointly or severally responsible for the tax payable by the firm if the business is discontinued.

### **Section 44-A.**

In case of any ship carrying passengers or goods at ports in British India is owned or chartered by a person

residing out of British India the owner or the charterer will be taxed in the year in which the income arises.

This section refers to tramps only. The established shipping companies have agents in British India and they are taxed in the usual way (not under this section).

#### **Section 44-B.**

In such a case mentioned above the master of the ship furnishes a return to Income-tax Officer stating the full amount realised and the Income-tax Officer shall impose tax on one-twentieth of the freight payable to the Principal. The tax is payable by the master of the ship before port clearance is allowed to the ship.

#### **Section 44-C.**

The recipient of such income has however the full right to claim the usual treatment, *viz.*, to be taxed on the total income in the next year. In such a case adjustment will be made later.

#### **Section 45.**

In every case for recovery of tax the ~~Income~~ tax Officer is responsible. Notice of demand must be issued immediately after assessment or revision by superior authorities. Time, place and other particulars in the notice must be carefully adhered to.

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#### **Section 46.**

This section lays down the mode and time of recovery of the assessee's dues. In case of arrears, an amount not exceeding the arrears can be imposed as penalty over and above the arrears.

#### **Section 47.**

Recovery of penalties will be in the same manner as recovery of arrears.

**Section 48. Refund** (where different rates charged.)

Refund of Income-tax is not allowed in the case of unregistered firm and association of individuals.

No refund is admissible if the non-resident is not a British subject or a subject of an Indian State.

If the non-resident is a British subject or subject of the Indian State he is entitled to a refund at a rate which is equal to the difference between the maximum rate and the rate applicable to his total income (total income to be computed by taking into account all incomes in British India and elsewhere).

Where a non-resident claims refund of I.T. under section 48, the non-resident's total world income will determine the rate at which he will be entitled to obtain refund.

*Illustration :*

Interest on securities amounts to Rs. 3000 (gross) on which I.T. deducted at 26 pies. His non-Indian income Rs. 5000. The total income Rs. 8000 will determine the rate, *i.e.*, 9 pies. If refund is not claimed then his Rs. 3000, is taxed at 26 pies. If refund is claimed then his Rs. 3000 will be taxed at 9 pies or refund at 17 pies on Rs. 3000, will be allowed.

**Section 48A. Refund** (where the assessee is not properly chargeable with that rate.)

Where no assessment has been made, he cannot claim refund under section 48. By this section he can claim refund, *e.g.*,

*Illustration :*

A man has only one item of income, *viz.*, interest from War Bonds. The gross income from them is Rs. 1600, though he received only Rs. 1383-6-0, in hand.



In a case like this, as there is no assessment but as Rs. 216-10-0 has already been deducted at source the Income-tax Officer shall allow a refund.

**Note:—**

Where set-off has been allowed, this section may apply.

### **Section 49.**

It deals with relief to be given where an income arising in British India has been taxed in India and also in U.K.

#### **Relief in Double Taxation.**

If (1) a person has paid U.K. Income-tax\* and also has paid Indian Income-tax\* on the same income for the same year and

if (2) the U.K. rate at which he was entitled to and has obtained relief is less than the Indian rate of tax

then he shall be entitled to a refund of a sum calculated on that part of his income at a rate equal to the difference between the Indian rate or the appropriate U.K. rate whichever is less and the rate at which he was entitled to and obtained relief in U.K.

An assessee must first get his relief in U.K. and only then can he claim a refund or relief in India. He cannot claim relief in India during an assessment and he must produce proof that he has obtained relief in U.K. and also of the rate of relief. A certificate given below is granted by U.K. authorities in respect of relief. On production of this certificate, the Indian authorities will be prepared to grant relief in India.

---

\*The expression Income-tax means Income-tax and Super-tax.

U.K. relief certificate given below :—

Finance Act 1920, Section 27.

Relief in respect of Dominion Income-tax.

This is to certify that Jalpaiguri Tea Company, Ltd., 3, Mission Square, London, E.C. 4, has been allowed relief from United Kingdom Income-tax for the year ended 5th April, 1937, in respect of British India Income-tax.

(a) Appropriate rate of U.K. I.T., for the year ended 5th April, 1937, is 4s. 9d. in the £.

(b) Amount of income as assessed to U.K. I.T., for the year 5th April, 1937, on which relief from U.K.I.T. has been allowed in respect of British Indian Income-tax is £4225 being 40% of the adjusted profits for the year 1935.

(c) Description of the said income—Profits from Tea Estate.

(d) Rate of relief allowed—2s. 4½d. in £.

(e) Amount of relief allowed £501.

(Sd.) H. M. Inspector of Taxes.

#### Method of working out Section 49.

(1) Find out Total Income-tax payable and find out the effective rate, *i.e.*,  $\frac{\text{Amount of Income-Tax}}{\text{income on which I/T charged}}$

(2) Find out Total Super-tax payable and find out the effective rate, *i.e.*,  $\frac{\text{Amount of Super-Tax}}{\text{Total Income}}$

(3) Find out from the U.K. Certificate—

(a) Income,

(b) Whether relief should be allowed on the Indian or the U.K. income if this be lower,

\*(c) Appropriate rate of U.K. I.T.

(d) Rate of relief of U.K.

---

\*Appropriate rate is the same as effective rate.

## (4) Relief to be given in India :—

Indian rate or U.K. rate whichever is less

*Minus* U.K. rate of relief.

There may be differences in computing the taxable income in the two countries as explained below :—

(1) If the income as computed in British India is higher or lower than that computed in U.K. because either—

- (a) particular allowances and deductions such as wear and tear differ in the two countries; or
- (b) the periods of income on which the tax is charged are not identical, then relief in British India should be calculated on the income computed in British India.

Such a difference is quite frequent for allowable deductions differ in the two countries—

The case of (b) above requires elucidation.

Take 1935-36 assessment. Suppose in India total income includes income from business and dividends up to 31st December, 1934, as the assessee's basis is the calendar year.

In U.K. the total income will include business income up to 31st December, 1934, and may include dividends up to 5th April, 1935. Hence due to the periods of income being different, a difference arises in the Taxable income.

If Taxable income in British India is Rs. 30,000 and if taxable income (with all allowances and deductions) in U.K. is Rs. 24,000. then relief on Rs. 30,000 will be given in India.

(2) If the difference between the incomes charged in the two countries is due to a loss being carried forward in the U.K., and if there is no other cause of variation, then the income will always be lower in U.K. since the carry-forward of losses is not allowed in British India. In such cases relief should not be given in India on the losses carried forward in U.K.

*1935-36 assessment.*

|  |     |     |            |
|--|-----|-----|------------|
| Taxable income in India  | ... | ... | Rs. 30,000 |
| Income assessed in U.K. (after carrying forward losses in previous years) on £1800 converted into rupees at the rate of 1s. 6d. in the rupee | ... | ... | Rs. 24,000 |

Relief in this case will be given in India on Rs. 24,000 as follows :—

|   |     |                       |
|---|-----|-----------------------|
| (Assuming) effective Indian rate to be 30½ pies         | ... | 2.527 annas per rupee |
| Less (assuming) U.K. rate of relief at 2s. 3d. in the £ | ... | 1.8 annas per rupee   |
| Difference being rate of relief                         | ... | .727 anna per rupee   |

Therefore relief on Rs. 24,000 at the rate of .727 anna in the rupee is Rs. 1,090-8-0.

**Note:—**

Effective Indian rate is 2.527.

Effective U.K. rate is 3.6.

Therefore Indian rate being lesser of the two, U.K. relief rate is deducted from it.

1936-37.

|  |        |                     |
|--|--------|---------------------|
| Assuming Income-tax payable                  | Rs.    | 21,328.             |
| Super-tax payable                            | Rs.    | 6,458.              |
| Total Income on which I/T<br>and S/T charged | Rs.    | 1,45,387.           |
| Effective rate for I/T.                      | 2·3472 | annas in the rupee. |
| Effective rate for S/T                       | ·7107  | .. ..               |
| Total effective rate for India               | 3·05   | .. ..               |
| Less U.K. rate of relief at<br>2s. 4½d.      | 1·900  | .. ..               |

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**1·15**

Relief due on Rs. 1,45,387 at 1·15 annas in the rupee  
is ... .. Rs. 10,521-7-0

The question of relief becomes much more complicated where a company earns an income from tax-free securities.

*Illustration :*

|                                     |     |                  |
|-------------------------------------|-----|------------------|
| Business profits                    | Rs. | 60,000           |
| and income from tax-free securities | Rs. | 5,000            |
|                                     |     | <hr/> Rs. 65,000 |

Here the entire total income Rs. 65,000 is not charged both to income-tax and super-tax, but only Rs. 60,000 is charged to income-tax and super-tax and Rs. 5,000 only to super-tax.

Hence the total income is divided into the following slabs :—

|   |     |        |
|---|-----|--------|
| (1) Income charged to income-tax and<br>super-tax | Rs. | 60,000 |
|---|-----|--------|

|  |     |                 |
|--|-----|-----------------|
| (2) Income charged to super-tax only ...   | Rs. | 5,000           |
| Income-tax payable on Rs. 60,000 at the<br>rate of 26 pies ... ..                      | Rs. | 8,125           |
| Add sur-charge 1/12 ... ..   | Rs. | 677-1           |
|  | Rs. | <u>8,802-1</u>  |
| Super-tax payable on Rs. 15,000<br>(Rs. 65,000 – 50,000) at 1 anna flat<br>rate ... .. | Rs. | 937-8           |
| Add sur-charge 1/12 ... ..   | Rs. | 78-2            |
|  | Rs. | <u>1,015-10</u> |

Now, regarding (1) above effective rate for

I/T ... .. 2·347 annas

Regarding (1) above effective rate for S/T : 25 ..

Total effective rate for India ... 2·59 ..

Less U.K. rate of relief @ 2s. 6d., *i.e.*,  
-/2/- ... .. 2·00 ..

Indian rate of relief on slab (1), *i.e.*,  
Rs. 60,000 ... .. 59 ..

Regarding (2) above, effective rate for S/T : 25 ..

Less U.K. rate of relief ... .. 2·00 ..

In this case no relief is allowed in India.

Note:—

Indian effective rate 2·59 annas

U.K. effective rate 4·00 .. (*i.e.*, 5s.)

Rate of relief 2·00 ..

Total effective rate for India is necessary in this illustration only with reference to slab (1).

**Experts' Report criticised:**

The Report by suggesting "all income basis" has brought about further complications in section 49, namely, Double Taxation Relief. Already double taxation relief matters are complicated and they are rendered more difficult by the different conditions of taxation matters and principles existing in the two countries.

The matter should not be further complicated by the adoption of "all income basis." The gain which is expected from the adoption of this basis will be largely reduced by (1) payments by way of double taxation relief and (2) payment to the machinery to be specially set up for coping with the additional work of the department. The Income-tax Department has already sufficient work if it has to be carefully done. There is no doubt that in matters of section 49, the Income-tax Officers have hardly any control over things taking place in United Kingdom. Cases take inordinately long time for disposal and all this is without much corresponding gain to the State Revenue.

There is no doubt that a portion of the Indian revenue is returned by way of this relief. All sterling companies working in India get a relief through the shareholders' or members' personal assessments. The cases of Sterling Tea Companies are glaring instances which render the contention of doing away with any such relief still stronger. Firstly, tea companies are exempted to the extent of 60 per cent, and then relief is given in addition.

The continuance of any such relief can be very fairly and reasonably opposed on the ground that the *Indian Exchequer does not get the tax twice* on the same source of income and as such from the point of view of the Indian Exchequer there is no double taxation and hence a relief cannot be justified. A person who has the means of

carrying on trade in two countries may safely be presumed to have means of paying tax to both the countries and the country in which income accrues or arises should never be called upon to make any refund whatsoever. It is up to the U.K. Government to give a relief where they have charged Indian Profits to U.K. tax. While without getting Income-tax twice into the Indian Exchequer, relief to U.K. assessee is given, it may be pointed out that the dividends of an Indian company are subjected to Super-tax twice—once as a company and again in the hands of the shareholders. In this case, however, double taxation is defended by calling the taxes in two different names, but the individual knows that he has to bear the burden twice for the same dividend.

#### **Section 49A.**

Where an assessee is entitled to a refund, I.T.O., or A.C. or Commissioner may set off refund wholly or in part against any tax payable by the assessee.

#### **Section 49B.**

An Executor, Administrator or Trustee or other legal representative is entitled to receive such refund in case the assessee cannot claim it due to death or bankruptcy, etc.

#### **Section 50.**

Claim for refund must be made within one year from the last day of the year in which the tax was recovered or before the last day of the financial year commencing after the expiry of the previous year, in which the income arose on which the tax was recovered, whichever period may expire later.

Date of recovery of tax—28th June, 1936.



Last date of the year being 31st December, 1936, claim for refund must be made within 31st December, 1937.

### Section 50A.

When I.T.O. refuses a claim of refund, an appeal may be made to the Assistant Commissioner.

The appeal shall be presented within 30 days of the date of the refusal.

### Section 51.

Failure to make payments

„ „ deliver returns or statements

„ „ grant inspection

shall be punishable with a fine which may extend to Rs. 10 per day during which default continues.

### Section 52.

This section specifies items of offence and brings them under particular section of the Indian Penal Code.

This section will apply when false statement has been furnished deliberately with the full knowledge that it is untrue.

*Ganga Sagar v. Emperor* (1929, U.P.). The case arose out of a false return. Justice Mukerjee observed, "The Government Advocate has told us that Rs. 3,00,000, were really only a small portion of the taxes Mr. Ganga Sagar should have paid in the course of several previous years. We have no evidence on the point and even, then if this were true, the law did not provide for recovery of taxes on 'escaped income' for more than one year (see section 34). The Income-tax authorities were, therefore, trying to realize, by the threat of prosecution, what they could not realize under the Law. This is a hardly desirable conduct in officers of the Government who are really servants of the State and, therefore, of the people. Then, I am rather surprised to find that when the negotiations for compounding the offence fell through, Mr. Ganga Sagar was charged not only with an offence

under section 177, I.P.C., but also with offence under sections 193 and 465, I.P.C. Neither the offence under section 193 nor the offence under section 465, I.P.C., is compoundable; if the income-tax authorities believed that Mr. Ganga Sagar had committed offence under these two sections of the Indian Penal Code, they had no right to drop the prosecution under those sections, on receipt of money. The talk of compromise could only have related to the offence under section 177, I.P.C., read with section 52, Income-tax Act. In that case, on the failure of the compromise, no prosecution under sections 193 and 465 should have been ordered. The officers of the Crown, therefore, on whose behalf the learned Government Advocate is now pressing for a sentence of imprisonment, have hardly been fair in their dealings with Mr. Ganga Sagar, and the prayer for a sentence of imprisonment comes but with ill grace from their mouth." Again he observed, "it must indeed be conceded that a man who is liable to pay a tax is entitled to take shelter under all devices which he may adopt, within the law, to avoid payment of the tax. Indeed, the whole scheme of the Indian Income-tax Act contemplates that people, liable to be assessed with the Income-tax, were likely to shirk making true disclosures and if they did go wrong they were to be treated with more or less leniency."

Justice Niamatullah observed "The Act empowers the Income-tax authorities to compound offences on receipt of money; but it was never the intention of the legislature that the power conferred by it should be used to obtain as much money as possible by holding out a threat of prosecution."

It was also decided that a letter received by the I.T.O. from the assessee together with a statement in Hindi and a blank form attached would constitute the making of a return.

### Section 53.

Assistant Commissioner alone can direct a prosecution for an offence under section 51 or 52.

Assistant Commissioner may stay any proceedings or compound any such offence.

### Section 54.

This section states that income-tax records are to be kept confidential.

If any public servant discloses any particulars contained in any statement, return, etc., he shall be punishable with imprisonment which may extend to 6 months.

**Section 55. Charging section for super-tax.**

In addition to income-tax, super-tax shall be charged on the total income of

- (1) individual,
- (2) Hindu undivided family,
- (3) company,
- (4) unregistered firm,
- (5) other association of individuals (not being a registered firm).

Super-tax is levied on slab basis, *i.e.*, different slabs of the income are super-taxed at different (progressive) rates.

Super-tax on companies is levied at a flat rate.

**Section 56.**

Total income for super-tax is the same as for income-tax.

**Section 57.**

Resident partners of a registered firm are jointly and severally responsible for super-tax due from non-resident partner.

**Section 58.**

This section states that all provisions of the Act shall apply except sections 3, proviso of section 7(1), provisos 2 and 3 of section 8, 14(2), 15, 17, 19, 20, 21, 48, 58F and 58G(2) and (3).

Super-tax is payable by the assessee direct except as provided in certain sections.

**Section 58A.-M.**

These sections give special provisions to certain classes of provident funds which are known in the Act as Recognised Provident Fund.

Recognised Provident Fund means a provident fund which has been and continues to be recognised by the Commissioner in accordance with the provisions of Chapter IX A of the Act.

Exemption of "Recognised" Provident Funds:—

"The main conditions to which such Provident Funds must conform in order to secure these concessions are:—

- (1) that the funds shall be vested in two or more trustees or in the Official Trustee under an irrevocable trust;
- (2) that the employer shall not be entitled to recover any sum whatsoever from the Fund except where the employee is dismissed for misconduct or voluntarily leaves employment without adequate reasons;
- (3) that in any case such recoveries shall be limited to the contributions made by the employer himself;
- (4) that the subscriptions of the employees and the contributions by the employer shall be regular and not casual;
- (5) that the employers' contribution should not exceed the employees' subscription as a rule; and
- (6) that the employee shall be employed in India or the principal place of business of the employer shall be in British India.

The income-tax concessions are:—

- (a) Contributions to a Recognised Provident Fund both by the employee and the employer taken together shall be exempt from income-tax but not from super-tax up to 1/6th of the employee's annual salary. In addition, an employee can obtain under section 15(1) rebate of income-tax on insurance premia subject to the limit laid down in section 15(3). If in any Fund the contributions made by an employee exceed the 1/6th limit the excess contributions and the interest thereon together with interest in excess of the prescribed maximum (at present 6 per cent) will be liable to tax.
- (b) Income on the investments held by the Fund is also exempt from income-tax.
- (c) The accumulated balance due to an employee which includes interest on contributions—is also exempt from income-tax and super-tax and is not to be included in computation of the total income, provided the employee has rendered continuous service

with his employer for not less than five years. The Commissioner has also power in certain circumstances to allow the exemption even when the service rendered is less than this period.

The contributions made by an employer to the individual accounts of his employee in a recognised Fund, less recoveries if any under the provisions of section 58-C (1) (f), are to be allowed as an item of expenditure under section 10(2) (ix) as the Fund is an irrevocable trust." (I.T.M.)

**Section 58E(1).** Annual accretion in any year shall be deemed to have been received in that year and shall be included in the Total Income.

|                                |  |
|--------------------------------|--|
| Hence, Employer's contribution | } to be included in<br>the Total Income. |
| Employee's contribution        |  |
| Interest on accumulations.     |  |

**Proviso:**—Provided that Total Income for purposes of section 15(3) will include only Employee's own contributions. For all other purposes, Total Income is as per (1) above.

**Section 58F.** (1) Exemptions include both the contributions which will not exceed  $\frac{1}{6}$  of salary (salary includes so much only of an employee's remuneration as is of a specific monetary amount and is payable periodically).

(2) 6 per cent interest on accumulations is exempted from I.T. (But not from S.T.)

#### WORKING OF RECOGNISED PROVIDENT FUND

##### *Illustration :*

A's salary is Rs. 400 per month in a Mercantile house, where he pays Rs. 25 per month from his pay to the Recognised Provident Fund. A's employer pays Rs. 600 annually to A's credit by way of Provident Fund contribution. A pays life insurance premium of Rs. 1,200 annually. Find out A's taxable income.

*Statement of taxable income.*

|  |     |           |                             |
|--|-----|-----------|-----------------------------|
| 1. Net salary  | ... | Rs. 4,500 |                             |
| Employee's Provident<br>Fund contribution  | ... | Rs. 300   |                             |
|  |     | —         | Rs. 4,800                   |
| 2. Annual accretion:—  |     |           |                             |
| employer's   | Rs. | 600       |                             |
| employee's   | Rs. | 300       |                             |
| Int. on P/F A/c  | Rs. | 108       |                             |
|  |     | —         | Rs. 1,008                   |
| Less employee's con-<br>tribution  | ... | Rs. 300   | Rs. 708                     |
|  |     | —         | —                           |
|  |     |           | Total Income ... Rs. 5,508  |
| 3. Deductions on account of Provident<br>Fund and Life Insurance premium<br>will be $\frac{1}{3}$ of (Rs. 5508 <i>minus</i> Rs. 708) |     |           |                             |
| (a) Provident Fund allowed $\frac{1}{3}$ of<br>salary  | ... | Rs. 800   | ...                         |
| (b) Life Insurance premium due<br>(in this case)   | ... | nil       | ...                         |
| 4. Exempted interest at 6% on accumu-<br>lations ( <i>i.e.</i> , P/F A/c)  | ... | Rs. 108   | Rs. 908                     |
|  |     |           | —                           |
|  |     |           | Taxable Income ... Rs. 4600 |

*Illustration :*

A's salary is Rs. 400 per month in a Mercantile House where he pays Rs. 25 per month from his pay to the Recognised Provident Fund. He has income from other sources Rs. 6000. A's employer pays Rs. 600 annually to A's credit by way of Provident Fund contribution. A pays life insurance premium Rs. 2000 annually. Find out A's taxable income.

*Statement of taxable income.*

|  |          |         |                |           |
|--|----------|---------|----------------|-----------|
| 1. Salary  | ...      | ...     | ...            | Rs. 4800  |
| 2. Annual accretion:—  |          |         |                |           |
| employer's   | Rs. 600  |         |                |           |
| employee's   | Rs. 300  |         |                |           |
| Int. on P/F A/c  | Rs. 108  |         |                |           |
|  |          |         | Rs. 1008       |           |
| Less employee's contribution   |          |         | Rs. 300        | Rs. 703   |
| 3. Other sources   | ...      | ...     |                | Rs. 6000  |
|  |          |         | Total Income   | Rs. 11508 |
| 4. Total deductions in respect of Provident Fund and Life Insurance premium will be: |          |         |                |           |
| $\frac{1}{6}$ of (Rs. 11508 minus Rs. 708)   | Rs. 1800 |         |                |           |
| (a) Provident Fund deduction being $\frac{1}{6}$ of salary, i.e.,                    | Rs. 800  |         |                |           |
| (b) L.I.P. deduction will be   | Rs. 1000 |         |                |           |
|  |          |         | Rs. 1800       |           |
| 5. Exempted interest being 6% on accumulations (P/F A/c)                             | ...      | Rs. 108 |                | Rs. 1908  |
|  |          |         | Taxable Income | Rs. 9600  |

*Working of Government Provident Fund.**Illustration:*

A is a Government servant and his salary is Rs. 400 per month. He pays Rs. 25 per month to his Provident Fund. Government contribution is Rs. 50 per month. A pays Life Insurance premium of Rs. 1200 annually. Find out A's taxable income.

|   |     |         |                              |
|---|-----|---------|------------------------------|
| 1. Salary   | ... | ...     | Rs. 4800                     |
|   |     |         | <u>Rs. 4800</u>              |
| 2. Deduction on account of Provident Fund and Insurance premium not exceeding $\frac{1}{6}$ of Rs. 4800 | ... | Rs. 800 |                              |
|   |     |         | <u>Rs. 4000 Taxable</u>      |
|   |     |         | Rs. 4000 @ 6 pies = Rs. 125. |

**Note:**

(1) If deduction of income-tax from his salary has already been made after taking into account Life Insurance premium payments then no refund or no excess payment has to be made.

(2) If on the other hand income-tax from his salary has been made without any reference to Provident Fund and Life Insurance premium payments, a refund will be made to the assessee.

### Section 59.

The Central Board of Revenue may make rules for carrying out the purposes of the Act and for the ascertainment and determination of any class of income.

(1) A rule has almost the same force as a section.

(2) The rules framed by the Central Board of Revenue must follow from the Act so that no conflict may arise.

(3) If there is unfortunately any conflict between two rules or between a rule and a section, the section will prevail.

(4) Rules are for the guidance of fiscal officers.

### Section 60.

The Governor-General-in-Council may by notification in the Gazette of India make an exemption, reduction in rate or other modification in respect of any class of income in whole or in part.

*Exemption under section 60.*—Some important items only are given below:—

These classes of income shall be exempt from the tax payable and they shall not be taken into account in determining the total income of an assessee—

- (a) Scholarships granted to meet the cost of education.
- (b) The yield of Post Office cash certificates.
- (c) The interest on deposits in the Post Office Savings Bank. ....
- (d) The income of a University or other educational institution existing solely for educational purposes and not for purposes of profit.
- (e) The salary of His Majesty's Trade Commissioners in India.
- (f) Gratuities which are granted by the Railway Board or under general orders issued by the Railway Board to employees on their retirement or discharge from



service or, in the event of their death while in service, to their widows or children or other members of their families.

- (g) The allowance or salary paid in the United Kingdom to officers of Government on leave or duty in that country whether such allowance or salary is paid in sterling in the United Kingdom or by means of negotiable rupee drafts on a bank in India.
- (h) The leave allowance or salary drawn from any Colonial Treasury by officers of Government on leave or duty in the Colony.
- (i) Leave salaries or leave allowances paid in the United Kingdom or in a Colony, to officers of local authorities, or to the employees of Companies, or of private employers on leave in the United Kingdom or in such Colony.
- (j) Vacation salaries paid in the United Kingdom or in a Colony to Judges of High Courts or of Chief Courts, to Judicial Commissioners, or to other officers of Government, when on vacation therein.
- (k) The pensions of officers of Government residing out of India drawn from any Colonial Treasury or paid in the United Kingdom, whether such pensions are paid in sterling or by means of negotiable rupee drafts on a bank in India.
- (l) The pensions paid in the United Kingdom or in a Colony to officers of local authorities or employees of companies or of private employers, such officers or employees being resident out of India.
- (m) The interest on Mysore Durbar Securities.

*Exemptions—Incomes included in “total income.”*—The following classes of income shall be exempt from the tax payable under the said Act, but shall be taken into account in determining the total income of an assessee for the purposes of the said Act:—

- (1) The interest on Government securities purchased through the Post Office, and held in the custody of the Accountant-General, Post and Telegraphs.
- (2) Sums received by an assessee on account of salary, bonus, commission or other remuneration for services rendered, or in lieu of interest on money advanced, to a person for the purposes of his business,

where such sums have been paid out of, or determined with reference to, the profits of such business.

and, by reason of such mode of payment or determination, have not been allowed as a deduction but have been included in the profits of the business on which

income-tax has been assessed and charged under the head "business":

Provided that such sums shall not be exempt from the payment of super-tax unless they are paid to the assessee by a person other than a company and have already been assessed to super-tax.

- (3) The profits of any Co-operative Society other than the Sanikatta Salt-owners' Society in the Bombay Presidency for the time being registered under the Co-operative Societies Act, 1912 (II of 1912), the Bombay Co-operative Societies Act, 1925 (Bombay Act VII of 1925), or the Burma Co-operative Societies Act, 1927 (Burma Act VI of 1927), or the dividends or other payments received by the members of any such Society on account of profits.

The exemption which extends both to income-tax and super-tax applies only to "profits" in the strict sense of the word as used in the Act and does not include "income" derived by Co-operative Societies from interest on securities or dividends. The Societies whose income liable to income-tax is not taxable at the maximum rate or who have no income liable to tax should apply to the Income-tax Officer concerned for the issue of exemption certificates authorising persons paying interest on securities not to deduct any tax at source or to deduct tax at a lower rate than the maximum, as the case may be.

Where a Co-operative Society incurs a loss under any head of income that has been exempted from tax by notification under section 60 (1) of the Act, such loss may be set off under section 24 against any income that is not so exempted.

- (4) Such part of the profits or gains of a firm which has discontinued its business, profession or vocation as is proportionate to the share of an assessee in the firm at the time of such discontinuance, if income-tax has at any time been charged on such business, profession or vocation under the Indian Income-tax Act, 1918 (VII of 1918), or if an assessment has been made on the firm in respect of such profits or gains under sub-section (1) of section 25 of the Indian Income-tax Act, 1922 (XI of 1922).

The above exemption applies only to income-tax and not to super-tax.

Apart from the particular cases mentioned in this paragraph, the incomes or portions of incomes exempted under section 4 of the Act and under the orders of the Governor-General-in-Council under section 60 of the Act referred to in paragraph 17 are not only not subject to income-tax or super-tax, but they are also not to be taken into account in determining the rate of tax on other income; they are excluded from consideration altogether." (I.T.M.)

**Co-operative Society\***

(1) Co-operative Society is to be assessed like an individual, *i.e.*, when the Total Income is Rs. 2000 or over.

(2) For purposes of Income-tax, pure business profit of a Co-operative Society shall be found out.

(3) Such profits (pure business profits) are exempt from I/T and S/T but will enter into the Total Income for determining the rate.

(4) Therefore Co-operative Society's profits from:—

- (a) Interest on Securities,
- (b) Dividends,
- (c) Property,
- (d) Other sources,

are taxable.

*Illustration:*

If a Co-operative Society has the following incomes:—

|   |                |
|---|----------------|
| (1) Pure Business Profit ...              | Rs. 15,000     |
| (2) Interest on Securities<br>(gross) ... | ... Rs. 13,000 |
| (3) Dividends (gross) ...                 | Rs. 16,000     |
| Then the Total Income ...                 | Rs. 44,000     |
| Hence, its rate is 25 pies.               |                |
| Total Income ...                          | ... Rs. 44,000 |
| Less Pure Profit exempted                 | Rs. 15,000     |
|   | Rs. 29,000     |

Refund will be allowed on Rs. 29,000 at the rate of 1 pie in the rupee.

---

\* Section 28 of the Co-operative Society Act provides:—

The Governor-General-in-Council may in the case of any Registered Society or class of Registered Society remit income-tax payable in respect of the profits of the Society or of the dividends or other payments received by the members of the Society on account of profits.

*Illustration :*

A Co-operative Society has—

|   |            |                                       |
|---|------------|---------------------------------------|
| (1) Pure Business Profit ...              | Rs. 15,000 |                                       |
| (2) Interest on Securities<br>(gross) ... | Rs. 13,000 |                                       |
| (3) Dividends (gross) ...                 | Rs. 16,000 |                                       |
| (4) Property rents ...                    | Rs. 22,000 |                                       |
|   |            | Rs. 66,000 Total Income.              |
| Total Income ...                          | Rs. 66,000 |                                       |
| Less Pure Profit exempted                 | Rs. 15,000 |                                       |
|   |            | Rs. 51,000 to be taxed at<br>25 pies. |

Dividends and Interest on Securities have borne 26 pies tax. Therefore tax at 25 pies will be charged on rents, viz., on Rs. 22,000 and refund will be allowed at 1 pie on Rs. 29,000.

Continuing Illustration above, find out Super-tax payable.

|                                |             |               |
|--------------------------------|-------------|---------------|
| Super Tax; Total Income ...    | Rs. 66,000  |               |
| Less Pure Profit ...           | Rs. 15,000  |               |
|                                |             | Rs. 51,000    |
| Exemption Statutory ...        | Rs. 30,000  |               |
|                                |             | Rs. 21,000    |
| First Rs. 20,000 at 9 pies ... | Rs. 937-8-0 |               |
| Rs. 1,000 at 15 pies ...       | Rs. 78-2-0  |               |
|                                |             | Rs. 1015-10-0 |

*Illustration :*

A man receives a salary of Rs. 300 p.m. He has an investment in Securities the profits from which amount to Rs. 4,000 (gross). He got a dividend from a Co-operative Society—the gross amount of dividend being Rs. 5,000.

Therefore A's Total Income—

|  |     |                          |           |
|--|-----|--------------------------|-----------|
| Salary   | ... | Rs. 3,600                |           |
| Interest on Securities                           | ... | Rs. 4,000 (gross)        |           |
| Co-operative Dividends                           | ... | Rs. 5,000 (gross)        |           |
|  |     |                          |           |
| Total Income                                     | ... | Rs.12,600 (rate 12 pies) |           |
| Less Co-operative Dividend                       |     | Rs. 5,000                |           |
|  |     |                          |           |
|  |     | Rs. 7,600 at 1 anna.     |           |
| Rs. 7,600 at 1 anna                              | ... |                          | Rs. 475   |
| Already taxed at 6 pies<br>on Rs. 3,600          |     | Rs. 112-8                |           |
| Interest on Securities at<br>26 pies on Rs. 4000 |     | Rs. 542-0                |           |
|  |     |                          |           |
|  |     | Rs. 654-8                | Rs. 654-8 |
| To be refunded to A                              |     |                          | Rs. 179-8 |

A Co-operative Society shows the following particulars :—

|  |     |                            |
|--|-----|----------------------------|
| Pure Business Loss                           | ... | Rs. 40,000                 |
| Interest on Securities (gross)               | ... | Rs. 1,00,000               |
|  |     |                            |
| Total Income                                 | ... | Rs. 60,000 (rate 25 pies). |
| Tax already deducted on Rs. 1,00,000 is      |     | Rs. 13,542                 |
| Tax due on the Total Income of Rs. 60,000 is |     | Rs. 7,812                  |
|  |     |                            |
| Refundable to the Society is                 |     | Rs. 5,730                  |

*Illustration:* Super-tax.

A Co-operative Society has:—

|                            |     |             |
|----------------------------|-----|-------------|
|                            |     | Rs.         |
| Pure Business Profit       | ... | 15,000      |
| Dividends (gross)          | ... | 25,000      |
|                            |     |             |
| Total Income               | ... | 40,000      |
| Less Pure Profit Exemption | ... | 15,000      |
|                            |     |             |
|                            |     | 25,000      |
| Less Statutory Exemption   | ... | 30,000      |
|                            |     |             |
|                            |     | Minus 5,000 |

No rebate is permissible to the individual assessee on dividends received from Co-operative Society (in case the Co-operative Society made its profits from different sources).

Hence, it is not taxable to Super-tax. In such a case the Total Income loses its significance altogether.

*Illustration:* Super-tax.

A Co-operative Society has:—

|                               | Rs.        |
|-------------------------------|------------|
| Pure Business Profit ...      | 1,50,000   |
| Dividends (gross) ...         | 50,000 (A) |
| Total Income ...              | 2,00,000   |
| Less Pure Profit Exempted ... | 1,50,000   |
|                               | 50,000     |
| Less Statutory Exemption ...  | 30,000     |
|                               | 20,000     |

Rs. 20,000 at 9 pies = Rs. 937-8-0.

*Illustration:*

If (A) above is Rs. 30,000 instead of Rs. 50,000, then, no S/T can be imposed. The total income loses its significance again. Hence, the inclusion of pure business profits into the Total Income for Super-tax purposes is hardly of any meaning.

A far-fetched method may be discussed here but is of doubtful value:—

|                              |            |              |
|------------------------------|------------|--------------|
| Total Income ...             |            | Rs. 2,00,000 |
| Less Statutory Exemption ... |            | Rs. 30,000   |
|                              |            | Rs. 1,70,000 |
| Rs. 20,000 at 9 pies = Rs.   | 937        | 8 0          |
| Rs. 50,000 at 15 pies = Rs.  | 3,906      | 4 0          |
| Rs. 50,000 at 21 pies = Rs.  | 5,468      | 12 0         |
| Rs. 50,000 at 27 pies = Rs.  | 7,031      | 4 0          |
|                              | Rs. 17,343 | 12 0         |

Super-tax payable on Total Income Rs. 2,00,000 is Rs. 17,343-12-0.

Therefore Super-tax payable on Rs. 50,000 (non-pure profit) is Rs. 4,335-15-0.

Objections to this method are

- (1) It does not follow from the present law.
- (2) Super-taxing Rs. 1,70,000 is tantamount to super-taxing the "pure profit.", for, the latter is definite part of Rs. 2,00,000.

- (3) The exemption of Rs. 30,000 is, by this method, indirectly split into two parts and only a proportionate abatement is given to non-pure profit.
- (4) "Pure profit" exemption is of the nature of "Tax-free" securities. It enters the total income and is eliminated—the Act has never allowed a deduction of that amount of tax which is determined by the ratio existing between the Total Income and Tax-free income. The Act has provided a deduction of the whole Tax-free income from the entire income and then tax has been imposed.
- (5) The idea of exempting the pure profit is to encourage Co-operative trading and transactions and therefore calling for a far-fetched method to get a larger tax from the societies is altogether out of tune.

**Note:—**

It is difficult to imagine a more poorly worded instruction and ill-thought-out plan for assessment of Co-operative Society.

Para 18 (I.T.M.), first six lines suggest as if, rents from house property as a source of income of a Co-operative Society will be included in the pure profit of a society. It will be difficult to agree with this view.

The Society as assessee and shareholder as assessee should be separately dealt with.

**Section 60(2).**

Where an assessee for any reason gets salary for more than 12 months and as a result his income is assessed at a higher rate than what would normally have happened, the Governor-General may grant any relief he thinks fit.

**Section 61.**

Any assessee can appear before the Income-tax authorities himself or authorise anybody in writing to appear on his behalf.

**Section 62.**

Receipt shall be given for any money paid.

**Section 63.**

A notice must be served by registered post or by any method of service which is effective.

Notice or requisition should be addressed to

- (a) any member of a firm,
- (b) the manager or Karta of the H. U. Family or to any adult male member of the family,
- (c) principal officer of any "Association of Individuals."

**Section 64.**

Place of assessment is that where the business lies or where the principal place of business is situated. Where an assessee has got business and other sources, the principal place of business will determine the place of assessment. Where no business is carried on, the place of residence will determine the assessing authority. Where the assessee's businesses are carried on in more than one province, the question is to be determined by the Commissioners of the provinces concerned. Where the Commissioners do not agree, the Central Board will decide the question. In case the assessee raises any dispute, the I. T. O. should refer the matter to Commissioner.

**Section 65.**

Every person deducting, retaining or paying any tax under this Act in respect of income belonging to another person is hereby indemnified for deduction, etc.



**Section 66.**

(1) When a question of law arises the Commissioner may, either on his own motion or on reference from any Income-tax authority, refer it to High Court with his own opinion.

(2) An assessee can move the Commissioner to refer to High Court any question of law arising out of an order under section 31 or 32 or order under section 33 enhancing an assessment or otherwise prejudicial to him.

(3) When on application under section 66(2) the Commissioner refuses to state the case, the assessee may apply to High Court and the High Court may require the Commissioner to state the case.

(4) The High Court may refer any case back to the Commissioner and direct any addition or alteration in the statement.

(5) The High Court shall decide the questions of law raised thereby.

**Note:—**

- (a) Appeal under section 31 or 32 having been disposed of, any question of application for reference can arise.
- (b) No reference on the merits of an assessment can be made under sections 1, 2, 3, above.
- (c) Reference lies in respect of questions of law arising out of the orders under sections 31, 32 and 33 directly made; but
- (d) when these orders are revised by the order under section 33, no right of reference lies.
- (e) The Commissioner does not function as a court when he refers a matter to the High Court under section 66(1), but only as a party and

is entitled to appeal to Privy Council under section 66(2).

- (f) The Chief Court of Oudh is a High Court within the meaning of section 66 of the Income-tax Act.

### Section 66A.

When any case has been referred to High Court under section 66, it shall be heard by a bench of not less than two judges of the High Court.

An appeal from any judgment of the High Court shall lie to the Privy Council where the High Court certifies it to be a fit one for such an appeal.

### Section 67.

No suit in any civil court can be brought to set aside or modify any assessment and no prosecution can be allowed against any Government servant for acts done in goodfaith.

### Section 67A.

Computation of periods of limitation.

The essentials of Hindu Undivided Family may be said to consist in:

- (1) common nucleus of ancestral property,
- (2) common fund,
- (3) common worship,
- (4) common food.

Hindu Undivided Family is treated in the Act as a separate entity and taxed as such.

“ Where the incomes, profits and gains of a member of an H. U. F. consists of his personal earnings and acquisitions by his own exertions they must be treated as his self-acquired property and not as a joint family .

property, unless they flow from the employment in business or otherwise of the joint funds." (I. T. M.)

All schools of Hindu will come under H. U. F.

In *Sardar Kirpal Singh v. Commissioner of Income-tax, Punjab*, the members of a Hindu undivided family formed themselves into a limited company allotting a specified number of shares to each of them. The Income-tax authorities refused to recognise this as a company and assessed the shareholders as Hindu undivided family. The High Court held that once it has formed into a company, Income-tax authorities have no right to treat it otherwise.

### Hindu Undivided Family.

(1) To pay income-tax like an individual, *i.e.*, over Rs. 2000.

(2) Portions of Hindu Undivided Family incomes received by individual members are not to be included in the total income at the time when individual members are separately assessed either to income-tax or super-tax.

(3) Even if the Hindu Undivided Family income is below Rs. 2000 (*i.e.*, when it is not taxed as Hindu Undivided Family income at the hands of the manager of the family) the portions distributed (as mentioned in paragraph 2 above) are not to be taken into account in the separate assessments.

(4) Super-tax exemption Rs. 75000.

(5) Paragraphs 2 and 3 above apply to super-tax also.

(6) Allowances paid to a member of the family are a part of the income of the head of the family.

(7) Hindu Undivided Family cannot be registered as a firm.

(8) Joint family members may separate but still may continue to carry on business jointly as before in which

case they will either be taxed as a firm or as an Association of individuals but not as H. U. F.

In *Maharaja Visweswar Singh v. C.I.T. Bihar* (April 1935), the Maharaja of Darbhanga, the holder of impartible Raj and the elder brother of the assessee, by an agreement made a 'babuana' grant to the assessee consisting of a number of villages in consideration of the assessee giving up all claims to the properties of the assessee's father. In addition to the above grant the Maharaja of Darbhanga gave him an allowance of Rs. 48000 annually. It was decided that this allowance was not liable to tax under section 14(1) as the allowance was received "as a member of the Hindu Undivided Family."

In *Vizianagram Maharaj Kumar v. C.I.T., U.P.* (January 1935), the question arose in the Allahabad High Court as to whether the allowance of Rs. 10,000 per month received by the younger brother of the Maharaja of Vizianagram who holds an impartible Raj, could be assessed to tax. The assessee claimed under section 14(1) that this income was exempt as it was received "as a member of the Hindu undivided family." The High Court came to the conclusion that the allowance received by the assessee came under section 14(1), but referred the matter to the Privy Council for authoritative pronouncement under section 66A, sub-section (2).

In *Moolji Sicka and others v. C.I.T., Bengal* (1935), it was decided that Hindu undivided family meant a Hindu coparcenary for the purposes of the Income-tax Act. Justice Lord William observed: "The necessity for making Hindu undivided family liable as such for income-tax was that the income and property of Hindu undivided family is undivided. The members have no separate income or property and cannot, therefore, be taxed as individuals. According to Mitakshara, until partition it cannot be said of any member that he has any definite share in the joint property. But Income-tax Act obviously is concerned only with income available for taxation and the owners of such income, and if there is no property or no income, an Income-tax Act has no application. It follows that the Act has no application to a Hindu Undivided family in the wider sense to which I have referred. Its provisions are attracted only where there exists property or income, that is to say, where there is a joint family property or joint family income or, in other words, where there exists a Hindu coparcenary."

"... if it were otherwise, a most absurd and unanticipated position would arise. Every Hindu possessing property or income who married would, *ipso facto*, become with his wife a Hindu Undivided Family and subject to taxation as such. The Income-tax Act, so far as Hindus are concerned as individuals, would apply only to bachelors. This cannot have been intended. In my opinion, therefore, where in the section of the Income-tax Act a Hindu Undivided Family is mentioned a Hindu coparcenary is meant."

In *Lakshminarayan, v. C.I.T., Bombay (1935)*, which came up a little later, the Bombay High Court held that the Hindu Undivided Family has been used in the Act in a wider sense (not coparcenary). Therefore even in the absence of any other male members the family would be regarded as Hindu Undivided Family for Income-tax purposes. In this case the Hindu Undivided family consisted of assessee, his father, mother and wife. On the death of the father, the family consisted of the other three. The question was as to whether the sole surviving male members would be taxed as an individual or as Hindu Undivided family.

The High Court decided that it was a Hindu Undivided Family consisting of a sole male member and female members entitled to maintenance.

The question is very important and the two High Courts have clearly differed.

**Impartible Estate:—**

- (1) Estates that cannot be legally partitioned.
- (2) Generally governed by rules of primogeniture.
- (3) It is still a joint family and the holder of such an estate will be assessed as the Head of Hindu Undivided Family and not as an individual. (*Kishen Kishore v. C.I.T., Punjab, 1933.*)
- (4) Allowances payable to junior members are an allowable deduction in calculating the assessable income of the head of the family. (*Kishen Kishore v. C.I.T., Punjab, 1933.*)
- (5) In *Raja Shiv Prasad Singh of Jharia (1924)*, it was held that the Finance Act contemplated larger deduction for Super Tax in a case where income is that of a H. U. F., only in which they are all jointly interested and not in the case of an impartible Estate where income is the sole property of the holder for the time being and therefore the larger exemption claimed (the assessee was assessed to Super Tax as individual) could not be allowed.
- (6) Maintenance allowance received by junior members of an impartible Raj would be exempt under section 14(1). [*Vizianagram case, U.P., 1935.*]

The Hindu Gains of Learning Act of 1930 provides the following :—

Notwithstanding any custom, rule or interpretation of the Hindu Law, no gains of learning shall be held not to be the exclusive and separate property of the acquirer merely by reason of—

- (a) his learning having been, in whole or in part, imparted to him by any member, living or deceased, of his family, or with the aid of the joint funds of his family, or with the aid of the funds of any member thereof, or
- (b) himself or his family having, while he was acquiring his learning, been maintained or supported, wholly or in part, by the joint funds of his family, or by the funds of any member thereof.

**Stridhan :—**

Properties owned absolutely by Female members of Hindu Families are called Stridhan.

Such properties have the following characteristics :—

(i) The female has the complete control both over the Corpus and the income.

(ii) Therefore she can alienate the property without any restriction.

(iii) Such properties are ordinarily obtained by gifts or presents from her husband or his relations or from her father or her other relations.

These incomes not being Joint Family incomes (and being separate incomes) cannot be taxed in the Joint Family income. As the Income-tax law stands at present, females are taxed separately as individuals in respect of Stridhan.

The following incomes are ordinarily assessed in the hands of a female separately :—

- (i) Stridhan.
- (ii) Hindu Woman's Estate.
  - (a) Estate which she inherits either from her husband or from any other relation.
  - (b) She has complete control over the usufruct of such a property during her lifetime.
  - (c) but her right to the Corpus of the property is restricted to the extent that she cannot make a testamentary gift of it or alienate it except under certain circumstances which technically constitute " legal necessity."
- (iii) Annuity.

Until recently the law was that a female was taxed as a separate individual in respect of *all* her incomes and therefore incomes from Stridhan, Hindu woman's property and annuities were taxed separately in her hands.

But as the law stands just at present by the addition of an amendment to section 16 of the Act, the incomes from " assets transferred. . . . apart " have got to be included in the total income of the husband and be assessed to tax.

#### The question now is how

(1) assets transferred by husband to wife *absolutely* with right of transfer (in other words an absolute gift) which transfer though not made " for adequate consideration " can at all be brought under husband's assessment?

(2) assets transferred by Muslim husband to his wife in lieu of dower debt (which may be for any amount) which transfer will no doubt be " for adequate consideration " be assessed under the present law?

**Experts' Report Criticised :**

The Hindu Undivided Family system is coming down from time immemorial and its status is recognised by law but it is difficult to hold that it should be charged to Income-tax as a separate entity. Under the present law a joint family is taxed and this is more or less an accepted position. But the Report has recommended far-reaching changes seriously affecting the Hindu families. The main suggestion is unsound and unfair as it contemplates to include members' separate incomes into the joint family income and then assess 50 per cent of the total income. The suggestion made seems to ignore the fundamental position under the Dayabhaga Law and for the matter of that even the Mitakshara Law. It is well-known that under Dayabhaga Law no son or heir is entitled to any share in the property until after the death of the father and even that depends on father's Will or expressed intention. So that to charge a Dayabhaga son to income-tax by combining his personal earnings and the Hindu Undivided Family earnings is to say the least far from equity. If this aggregation and assessment continue and then the Dayabhaga son finds he has been deprived of a share in the property, is it not a piece of tragic irony? In the case of Mitakshara son also, he does not get his share or even ascertain his share until partition. Under this circumstance to charge a Dayabhaga or a Mitakshara son to income-tax by combining the two earnings is carrying into effect the suggested "Due basis" with vengeance.

The far more inequitable suggestion is to assess 50 per cent. In all reason and equity the total income should be divided by the number of members forming the Coparcenary. The report admits that Hindu Undivided Family is under certain hardships now but the report puts it under far greater hardships. It is bound to create an possible situation.



**Joint-Stock Company:—**

(1) To pay I.T. at the highest rate on the whole of its statutory profits whatever be the amount of profits.

(2) A Joint-Stock Company's dividends are not taxed again (only included in the Total Income) in the hands of the shareholders.

(3) To pay Super-Tax at the Flat Rate of one anna on every rupee (over Rs. 50,000 of the total income). Even when the Company pays, Super Tax at graded rate will be levied individually on the assessee's total incomes which will include gross dividends also.

**Registered Firm:—**

(1) To pay I.T. at the maximum rate (*i.e.*, 26 pies) whatever the profits may be.

(2) Every partner has to include his portion of the registered Firm's profits into his Total Income.

(3) A partner will get a refund if more tax has been paid than his total income makes him liable.

(4) Not to pay Super-Tax as such but individual partners are to pay separately (their respective shares from the Firm being included in their total incomes).

**Unregistered Firm:—**

(1) To pay I.T. at the graded rate like an individual.

(2) Each partner's share is to be included in his total income to determine the rate irrespective of the Firm showing profits over or below Rs. 2,000.

(3) But that particular portion is not to be taxed again if the Firm's profits are over Rs. 2,000.

(4) If the Firm is taxed at a rate different from the rate applicable to the separate Total Income of the individual partner, the usual rule of adjusting the rate, (*i.e.*, levelling the rates to the one applicable to the total

income) ending in a refund or further payment, will not apply. The Firm's assessment will not affect the individual's other incomes. This principle of isolation does not operate where the unregistered Firm has not been taxed as such.

(5) If the Firm is not taxed—its profits being less than Rs. 2,000, then every individual partner must include his own share in his separate Total Income to determine the rate and to pay tax on that portion according to the rate determined by the Total Income.

(6) To pay Super-Tax like an individual on that amount which is in excess of Rs. 30,000.

(7) If the Firm as such pays S.T., the individual partner is not to pay again on the same share and it is to be particularly noted that an individual's share is not even included in his Total Income for S.T. purposes even to determine the liability.

(8) But if the Firm as such is not super-taxed, only then, is the income which any individual member of an unregistered Firm receives from the Firm, included in his Total Income and charged to Super-Tax.

Suppose an unregistered Firm's profits amount to Rs. 1,00,000, for super-tax

|                       |     |     |                       |
|-----------------------|-----|-----|-----------------------|
| 1st 30,000            | ... | ... | Nil                   |
| 2nd 20,000 at 9 pies  | ... | ... | Rs. 937 8 0           |
| 3rd 50,000 at 15 pies | ... | ... | Rs. 3,906 4 0         |
|                       |     |     | <u>Rs. 4,843 12 0</u> |

Suppose the above Rs. 1,00,000 is shared by A, B and C in the following manner:—

|   |     |     |                    |
|---|-----|-----|--------------------|
| A | ... | ... | Rs. 60,000         |
| B | ... | ... | Rs. 33,000         |
| C | ... | ... | Rs. 2,000          |
|   |     |     | <u>Rs.1,00,000</u> |

|   |            |
|---|------------|
| Supposing also that A's other incomes ... | Nil        |
| B's other incomes ...                     | Rs. 28,000 |
| C's other incomes ...                     | Rs. 15,000 |

From the above—

|                         |            |
|-------------------------|------------|
| A's total income is ... | Rs. 60,000 |
| B's total income is ... | Rs. 66,000 |
| C's total income is ... | Rs. 17,000 |

Further, in the ordinary way A and B should be super-taxed over Rs. 30,000 but for Super-tax purposes, the unregistered Firm's profits once super-taxed must not be included in the partners' individual assessments.

Therefore, individually S./T. is not payable; although as a partner of the unregistered Firm B bears a portion of Rs. 4,843-12-0 being S./T. payable by the Firm.

If the Firm instead of being unregistered is a registered Firm, then—

- (1) as firm it won't be super-taxed.
- (2) A's separate total income is Rs. 60,000, therefore S./T. on Rs. 30,000=Rs. 1,718-12-0,
- (3) B's separate total income is Rs. 66,000, therefore S./T. on Rs. 36,000=Rs. 2,187-8-0,
- (4) C's separate total income is Rs. 17,000, therefore S./T. Nil.

Therefore the total super-tax realisable from the individual partners is Rs. 3,906-4-0; whereas, in the case of the unregistered Firm the S./T. realisable is Rs. 4,843-12-0.

*Illustration:*

|                    |   |       |            |
|--------------------|---|-------|------------|
| Profits Rs. 75,000 | } | A ... | Rs. 25,000 |
|                    |   | B ... | Rs. 25,000 |
|                    |   | C ... | Rs. 25,000 |

If unregistered, S./T. will be levied on Rs. 45,000 as firm,  
∴ S./T. Rs. 3,281-4-0.

If registered, no Super-tax as firm,  
no Super-tax individually as each share is below Rs. 30,000.

Unregistered Firm:—

|                    |   |       |            |
|--------------------|---|-------|------------|
| Profits Rs. 29,500 | } | A ... | Rs. 1,000  |
|                    |   | B ... | Rs. 28,000 |
|                    |   | C ... | Rs. 500    |

As Firm, no S./T. is payable.

But as unregistered Firm is not, in this case, liable to S./T., these above individual shares will be included in the separate assessments.

Unregistered Firm Members cannot claim refund when tax is paid, as firm. Illustration given below:—

*Illustration :*

A, B, C are Members of an unregistered Firm

|           |     |           |
|-----------|-----|-----------|
| A's share | ... | Rs. 1,800 |
| B's share | ... | Rs. 2,500 |
| C's share | ... | Rs. 1,700 |
|           |     | Rs. 6,000 |

Rs. 6,000 will be taxed at 9 pies as unregistered Firm. A and C cannot claim refund at 9 pies (total income being below Rs. 2,000, A and C will not be taxable). B cannot claim refund at 3 pies (total income being liable to 6 pies).

*Illustration :*

When no tax is paid as firm (unregistered)

|                           |     |   |            |                       |           |
|---------------------------|-----|---|------------|-----------------------|-----------|
| Profits Rs. 1,850         | ... | { | A          | ...                   | Rs. 600   |
|                           |     |   | B          | ...                   | Rs. 900   |
|                           |     |   | C          | ...                   | Rs. 350   |
|                           |     |   |            |                       | Rs. 1,850 |
| Assuming A's other income | ... |   |            | Rs. 1,700             |           |
| ,, B's other income       | ... |   |            | Rs. 12,800            |           |
| ,, C's other income       | ... |   |            | Nil.                  |           |
| A's Total Income          | ... |   | Rs. 2,300  | (rate being 6 pies).  |           |
| B's Total Income          | ... |   | Rs. 13,700 | (rate being 12 pies). |           |
| C's Total Income          | ... |   | Rs. 350    | (not taxable).        |           |

*Illustration :*

|   |     |           |
|---|-----|-----------|
| Assuming, C's (unregistered Firm) income (being a share of Rs. 6,000) | ... | Rs. 1,700 |
| C's other incomes   | ... | Rs. 9,800 |

The unregistered Firm's profits Rs. 6,000 must have been taxed at 9 pies. Therefore, Rs. 1,700 has been taxed at 9 pies.

C's total income is Rs. 1,700 + 9,800 = Rs. 11,500.

Hence, the rate applicable is 12 pies in the rupee. Ordinarily, 12 pies should be imposed on the entire taxable income but in this particular case of an unregistered Firm, no additional tax of 3 pies on Rs. 1,700 can be made. As refund to A and C was not allowed, so additional payment cannot be demanded by I./T. Authorities. The amount Rs. 9,800, however, will be taxed at 12 pies.

**Association of Individuals:—**

- (1) To pay tax like an individual (over Rs. 2000).
- (2) If the total income is below Rs. 2000 then each one's share of the profits or income will be included in each one's separate assessment and will be taxed at the rate determined by the total income.
- (3) If the association has been assessed as such then also each one's share of the profits or income will be included in each one's separate assessment for the purpose of determining the liability and rate.
- (4) But this share of profits or income received from the association will not be taxed again.
- (5) No refund of tax will be allowed.
- (6) To pay super-tax like an individual.

\*From income-tax point of view association of individuals is exactly on the same footing as unregistered firm.

That being so, why is this assessee (association of individuals) conceived? Probably it is due to the fact that there are some organisations or venture which cannot properly call themselves firm.

Chamber of Commerce, club, co-operative society are instances of "association of individuals."

In *Chambers of Commerce, Hapur v. C.I.T., U.P.* (1936), the Chamber being registered as a Company under section 26 of the Companies Act (*i.e.*, association not formed for earning profits) claimed to be exempted from income-tax. The High Court decided against this claim.

In *B. N. Elias and others v. C.I.T., Bengal* (1935), a certain house property was bought by four individuals and they were joint owners holding the property as tenants in common. The

\**Note.*—There is a slight difference between "unregistered Firm" and "association of individuals," for according to section 55, the share of income from the "association of individuals" entering into separate personal assessments for S./T. do not enjoy any exemption unlike unregistered Firm.

Income-tax Officer assessed them as an association of individuals. The individuals contended that they should be taxed as co-owners, *i.e.*, individual assessments should have been made on the owners of the property separately. The High Court decided that it was an association of individuals.

In *Lucknow Ice Association v. C.I.T., U.P. (1926)*, several ice manufacturing firms formed a selling association for preventing underselling. It was decided that the association was a separate firm and was to be assessed.

### Meaning of "Free of Tax" and "Less Tax":—

'Free of Tax' in the case of Government bonds and Securities means that the securities are actually free from tax.

'Free of Tax' in the case of private securities (*viz.*, Limited Companies), means that the securities are not actually free from tax but that the shareholders have not to pay tax separately from their own other funds and that the Company had already paid tax from its undivided profits.

"Less Tax" in the case of Government Securities and also in the case of private securities and investments means one and the same thing, *viz.*, that they have to bear tax. Only the net amount is handed over to the security holders.

From the investor's point of view securities issued income-tax free whether by the Government of India or by Local Government mean the same thing.

### Illustrations:

(1) Rs. 500 Alpha Trading Ltd. @ 7% (Less Tax) means Rs. 35 (gross) on which Rs. 4-11-10 (Income-tax at 26 pies) deducted. Hence Rs. 30-4-2 actually received.

(2) Rs. 500 War Loan 7% (Less Tax) means as above.

(3) Rs. 500 War Loan 7% (Free of Tax) means Rs. 35 gross and net.

(4) Rs. 500 Alpha Trading Ltd. @ 7% (Free of tax)  
means Rs. 35 net

means Rs. 40-8-0 ( $35 \times \frac{108}{100}$ ) gross.

(5) Dividend 4% (Free of Tax) on Rs. 8300 in  
A.B. Co. Ltd.

means Rs. 332 net

.. Rs. 332  $\times \frac{108}{100}$  = Rs. 384 gross

..  $4\frac{2}{3}$  % (Less Tax)

### Illustration :

A company in a particular year makes profits (agreed to by the I.T.O.) of Rs. 40,000. It is resolved to distribute it as follows:—

5% Preference shares (on Rs. 400,000) = Rs. 20,000

Ordinary shares at 7% (on Rs. 200,000) = Rs. 14,000

Balance carried to reserve = Rs. 6,000

Rs. 40,000

If the above dividends Rs. 34,000 are to be declared "Free of Tax" then the company will have to bear tax on the whole of Rs. 40,000 (26 pies rate). The whole Rs. 34,000 will go to the shareholders and tax on Rs. 40,000 will be paid to the Income-tax authorities out of the undivided profits of the company.

If the above dividends are declared 'Less Tax,' then the company will firstly pay tax at 26 pies rate on Rs. 40,000 but later will recoup tax on Rs. 34,000 from the shareholders. The balance of tax will have to be borne by the company, i.e., the tax on Rs. 6,000 will not be recouped.

### Assessment of Life Insurance Companies.

In accordance with section 59 of the Act, the Central Board of Revenue has framed the following rules prescribing the manner in which and the procedure by which the

incomes, profits and gains shall be arrived at in the case of Insurance Companies.

*Rules :—*

25. In the case of Life Assurance Companies incorporated in British India whose profits are periodically ascertained by actuarial valuation, the income, profits and gains of the Life Assurance Business shall be the average annual net profits disclosed by the last preceding valuation, provided that any deductions made from the gross income in arriving at the actuarial valuation which are not admissible for the purpose of income-tax assessment, and any Indian income-tax deducted from or paid on income derived from investments before such income is received, shall be added to the net profits disclosed by the valuation.

26. Rule 25 shall apply also to the determination of the income, profits and gains derived from the annuity and capital redemption business of life assurance companies, the profits of which can be ascertained from the results of an actuarial valuation.

27. If the Indian income-tax deducted from interest on the investments of a company exceeds the tax on the income, profits and gains thus calculated, a refund may be permitted of the amount by which the deduction from interest on investments exceeds the tax payable on such income, profits and gains.

28. In the case of other classes of insurance business (fire, marine, motor car, burglary, etc.) of a company incorporated in British India, the income, profits or gains shall be determined in accordance with the provisions of the Act, subject to the allowance specified in the rule next following.

29. If in the ordinary accounts of any insurance business other than Life Assurance, Annuity, or Capital Redemption Business carried on by an Insurance Company any amount is actually charged against the receipts for the sole purpose of forming a reserve to meet outstanding liabilities or unexpired risk in respect of policies which have been issued (including risk of exceptional losses) and is not used for any other purpose such amount may be treated as expenditure incurred solely for the purpose of earning the profits of the business.

30. Any amount either written-off in the accounts or through the Actuarial Valuation Balance Sheet to meet depreciation of, or loss on, securities or other assets, or which is carried to a reserve fund formed for that sole purpose and not used for any other purpose, may be treated as expenditure incurred solely for the purpose of earning the profits of the business. Any sums taken credit for in the accounts or Actuarial Valuation Balance Sheet on account of appreciation of or gains on the securities or other assets shall be deemed to be income chargeable to tax, subject always to deduction of such portion thereof as has been



otherwise taken into account in calculating the income, profits or gains.

31. The income, profits and gains of companies carrying on Dividing Society or Assessment business shall be taken at 15 per cent of the premium income in the previous year and, in the case of non-resident companies, at 15 per cent of the Indian premium income in the previous year.

32. Notwithstanding anything contained in rules 25 to 31, the total income, however, of an insurance company carrying on more than one class of business shall be determined by its aggregate income from all classes of businesses.

35. The total income of the Indian branches of non-resident insurance companies (Life, Marine, Fire, Accident, Burglary, Fidelity Guarantee, etc.), in the absence of more reliable data, may be deemed to be the proportion of the total income, profits or gains, of the companies, corresponding to the proportion which their Indian premium income bears to their total premium income.

For the purpose of this rule, the total income, profits or gains of non-resident Life Assurance Companies whose profits are periodically ascertained by actuarial valuation shall be computed in the same manner as is prescribed in rule 25 for the computation of income, profits and gains of Life Assurance Companies incorporated in British India.

### COMPUTATION OF PROFITS OF LIFE INSURANCE COMPANY

From the quinquennial report of the valuation of the Liabilities and Assets of the Oudh Insurance Co., Ltd., Lucknow, as on 31st December, 1935, the following extract is taken:—

The Valuation Balance Sheet is as follows:—

|                     | Rs.         |                   | Rs.         |
|---------------------|-------------|-------------------|-------------|
| Net liability under |             | Funds as per      |             |
| Life Assurance      |             | Balance Sheet ... | 2,52,84,292 |
| transactions ...    | 2,27,70,645 |                   |             |
| Surplus ...         | 25,13,647   |                   |             |
|                     | 2,52,84,292 |                   | 2,52,84,292 |

Out of this surplus of Rs. 25,13,647, the expenses of valuation amounting to Rs. 20,000 have to be met leaving a sum of Rs. 24,93,647, to which must be added interim bonuses paid of Rs. 1,30,555 and thus the total surplus emerging during the quinquennium inclusive of the sum of Rs. 30,824 brought forward from the last valuation comes to be Rs. 26,24,202.

**CONSOLIDATED REVENUE ACCOUNT FOR 5 YEARS  
COMMENCING 1. 1. 1931 AND ENDING 31. 12. 1935.**

|                            | Income    | Rs.         | Expenditure.             | Rs.         |
|----------------------------|-----------|-------------|--------------------------|-------------|
| Life Fund at the beginning |           | 1,45,87,931 | Claims paid and Out-     |             |
| Premium ... ..             |           | 2,01,80,115 | standing ... ..          | 80,00,000   |
| Interest and               |           |             | Surrenders ... ..        | 12,00,000   |
| Dividends and              |           |             | Expenses of manage-      |             |
| Rents ... ..               | 50,56,856 |             | ment ... ..              | 50,00,000   |
| Less income-tax            | 4,17,330  |             | Income-Tax and Super-    |             |
|                            |           | 46,39,526   | Tax ... ..               | 2,06,770    |
| Other incomes ... ..       |           | 2,83,490    | Life Fund at the end ... | 2,52,84,292 |
|                            |           | 396,91,062  |                          |             |
| Total Rs. ...              |           |             | Total Rs. ...            | 3,96,91,062 |

*Assessment 1936-37.*

|   |          |           |
|---|----------|-----------|
|   | Rs.      | Rs.       |
| Surplus as per report ...                                   |          | 25,13,647 |
| Less balance brought forward<br>from previous valuation ... |          | 30,824    |
|   |          | 24,82,823 |
| Less Expenses of valuation ...                              |          | 20,000    |
|   |          | 24,62,823 |
| Add Interim bonuses paid ...                                | 1,30,555 |           |
| Add Income-tax on Interest,<br>Rents and Dividends ...      | 4,17,330 |           |
| Add Income-tax and Super-tax                                | 2,06,770 |           |
|   | 7,54,655 |           |
|   |          | 7,54,655  |
|   |          | 32,17,478 |

Rs. 32,17,478 ÷ 5 = Rs. 6,43,495 being the annual average profit for I./T. purposes,

## WESTERN INDIA MARINE INSURANCE CO., LTD.

## Revenue A/c for the year ending 31. 12. 1934.

|                   | Rs.      | a. | p. |                           | Rs.      | a. | p. |
|-------------------|----------|----|----|---------------------------|----------|----|----|
| Net Premiums ...  | 7,25,000 | 0  | 0  | Losses less               |          |    |    |
| Interest ...      | 2,15,000 | 0  | 0  | salvage ...               | 2,70,000 | 0  | 0  |
| Transfer fees ... | 250      | 0  | 0  | Commission ...            | 1,20,000 | 0  | 0  |
|                   |          |    |    | Charges General           |          |    |    |
|                   |          |    |    | ... 2,10,000              | 2,10,000 | 0  | 0  |
|                   |          |    |    | Surplus transferred to P. |          |    |    |
|                   |          |    |    | & L. A/c ...              | 3,40,250 | 0  | 0  |
|                   | <hr/>    |    |    |                           |          |    |    |
|                   | 9,40,250 | 0  | 0  |                           | 9,40,250 | 0  | 0  |
|                   | <hr/>    |    |    |                           | <hr/>    |    |    |

## P. and L. Account.

| Rs.                           |          | Rs.  |          |
|-------------------------------|----------|--|----------|
| Dividend of 40% declared ...  | 2,00,000 | By balance brought forward from the previous year  | 2,45,000 |
| Balance c/d ...               | 45,000   |  |          |
|                               | <hr/>    |  | <hr/>    |
|                               | 2,45,000 |  | 2,45,000 |
|                               | <hr/>    |  |          |
| Income-tax & Super-tax        | 20,000   | By balance brought down ...                        | 45,000   |
| Underwriting Suspense A/c ... | 1,00,000 | By surplus transferred from Revenue A/c (1934) ... | 3,40,250 |
| Balance as per B/S ...        | 2,65,250 |  |          |
|                               | <hr/>    |  | <hr/>    |
|                               | 3,85,250 |  | 3,85,250 |
|                               | <hr/>    |  |          |

## Analysis of Interest Rs. 2,15,000:—

|  | Rs.      |
|--|----------|
| (1) Interest on taxed securities (gross) ...                     | 12,260   |
| Interest on tax-free securities ...                              | 1,63,000 |
|  | <hr/>    |
|  | 1,75,260 |
| (2) Interest earned outside British India and not brought in ... | 40,350   |
|  | <hr/>    |
|  | 2,15,610 |
| (3) Less Interest paid ...                                       | 610      |
|  | <hr/>    |
|  | 2,15,000 |
|  | <hr/>    |

*Assessment 1935-36.*

|  | Rs.        |
|--|------------|
| Surplus as per Revenue A/c ... ..              | 3,40,250   |
| Less Interest earned outside British India ... | 40,350     |
|  | 2,99,900   |
| Less Underwriting Suspense Account ... ..      | 1,00,000   |
|  | 1,99,900   |
| Less Interest on securities ... ..             | 1,75,260   |
|  | 24,640     |
| Total Income of the Company—                   |            |
| (a) from business proper ... ..                | 24,640     |
| (b) from Interest on securities ... ..         | 1,75,260   |
|  | 1,99,900   |
| Income-tax on Rs. 24,640 at 26 pies per rupee  | 3,336 10 8 |
| Surcharge 1/6 ... ..                           | 556 1 9    |
|  | 3,892 12 5 |

**Note:—**

Taxable securities have already been taxed at the highest rate of 26 pies.

*Super-tax.*

|                                   |                |
|-----------------------------------|----------------|
| Total Income ... ..               | Rs. 1,99,900   |
| Less Exemption ... ..             | Rs. 50,000     |
|                                   | Rs. 1,49,900   |
| Super-tax at 12 pies per rupee on |                |
| Rs. 1,49,900 ... ..               | Rs. 9,368 12 0 |
| Surcharge 1/6 ... ..              | Rs. 1,561 7 4  |
|                                   | Rs. 10,930 3 4 |

payable.

The actuarial surplus is the basis of the Life Insurance assessment. The annual average of the surplus is to be found out. This is the method which follows from the

In the assessment 1936-37 the rate of surcharge is  $\frac{1}{12}$ .

rules (25 to 35). Another point of view is given in the following working :—

|   |                  |
|---|------------------|
| Life assurance fund on 31. 12. 25                                 | ... Rs. 2,45,000 |
| Less liabilities under Life Assurance transactions on 31. 12. 25  | ... Rs. 3,45,000 |
|   | <hr/>            |
| Deficiency  | ... Rs. 1,00,000 |
| Life Assurance fund on 31. 12. 30.                                | ... Rs. 4,70,000 |
| Less liabilities under Life Assurance transactions on 31. 12. 30. | ... Rs. 5,30,000 |
|   | <hr/>            |
| Deficiency  | ... Rs. 60,000   |

In the assessment of 1931-32 the Life Company claims that it has made a loss of Rs. 12,000 being the annual average on Rs. 60,000.

The Income-tax Authorities on the contrary take the view that the deficiency on 31st December, 1925 of Rs. 1,00,000 is reduced to Rs. 60,000 on 31st December, 1930, which means that there must have been profits of Rs. 40,000 during 1925 to 1930, which alone could have reduced the deficit. Hence, the annual average would be Rs. 8,000 profits.

Therefore, Company's contention is loss of Rs. 12,000  
Income-tax Department's contention is  
profit of ... .. Rs. 8,000

**The question is**—Can such a contention of the Income-tax Department be justified? To what extent does this method follow from the existing rules?

A case of great interest to the Life Insurance Companies has been recently decided by the Calcutta High Court, *viz.*, the case of North British and Mercantile Insurance Co., Ltd.

Three questions emerged from the case:—

- (1) Where income-tax is charged on the income of an Insurance Company as per rules made (rules 25 to 35), whether the Company can claim credit under

section 18(5) of the Act for any deduction of tax made at the source.

- (2) When profits of an Insurance Company are computed as per rules made (rules 25 to 35) whether the Company is entitled to claim that from the amount thus computed the amount of income of the Company in respect of interest on tax-free securities can be deducted in computing the assessable income.
- (3) Whether for correction of rate of income-tax the Income-tax Officer has any jurisdiction to reopen assessment under section 34 or to reassess at a higher rate than the one previously adopted.

Whether the Assistant Commissioner has jurisdiction to enhance the said assessment.

With regard to the first question, all the judges agreed that the Company can claim credit under section 18(5) for any deduction of tax on interest on securities made at source.

With regard to the second question, Derbyshire C.J. and Costello J. agreed that the Company is entitled to claim that from the amount ascertained according to rules 25 to 35, the amount of the income of the Company in respect of the interest on tax-free securities shall be deducted in computing the assessable income.

Panckridge J. dissented. He observed: "It follows that before the assessee can complain that the assessment violates 2nd proviso to section 8, they must show that the tax demanded is being demanded in respect of income, profits and gains which are covered by the section as being interest on securities. In my judgment, the assessee has failed to establish this. What is to be assessed to tax is the annual average net profits disclosed by the last preceding valuation with the additions provided for by rule 25."

In this particular issue, the Commissioner made some very clear, helpful and able observations. He says: "As regards the determination of the assessable income the rule is empirical and helps us to arrive only at a "notional figure" not necessarily the actual figure of any particular year. In my opinion this figure does not refer to any particular source or sources as contemplated by section 6 of the Act and does not admit of any dissection or analysis . . . These rules are intended to be self-contained provisions for assessment of Insurance Companies and to a case where these rules will apply the provisions contained in sections 6 to 12 shall have no application. That this is the intention of the law will be evident from rule 30, which provides for allowing depreciation on assets (otherwise allowable under section 10) and losses which are not ordinarily allowed."

With regard to the third question, Panckridge J. said: "There is more to be said for the argument that when what is appealed against is an assessment or reassessment under section 34 the Assistant Commissioner is bound to confine himself to what

is covered by such assessment or reassessment and cannot deal with matters covered by a previous assessment made under section 23. I prefer to base my decision that the Assistant Commissioner had no power in this case to enhance on the ground that the reassessment under section 34 was on the face of it without jurisdiction and as such should have been annulled with the result that the original assessment under section 23 would have stood."

### MUTUAL LIFE INSURANCE COMPANY

There are mutual benefit societies and mutual insurance companies whether limited companies or otherwise, whose main purpose is the mutual benefit of the members. In such cases, the income is not assessable. The object of mutual benefit in the constitution and its business in accordance therewith is an indication of non-assessability. Each case has to be examined and assessment will depend upon the circumstances. In the cases of Madura Hindu Permanent Fund, Ltd., and Millowners Mutual Insurance, the profits were exempt. In the case of National Mutual Life Association a portion was exempt. If such a "fund" or business makes income from interests, etc., received from outsiders, the income will evidently be assessable.

The English case *Styles v. New York Life Insurance Co.* (2 tax cases 460) the surplus which was distributed between the participating policy-holders consisted of

- (1) sale of life annuities,
- (2) profits arising out of business carried on with non-members,
- (3) excess premiums paid by participating policy-holders over the cost of their insurances,
- (4) profits arising out of non-participating policies.

In this case it was decided that the surplus arising from the excess premiums paid by participating policy-holders is not profit liable to tax.

An important case (*National Mutual Life Association v. C.I.T., Bombay*) has recently been decided by the Bombay High Court and later on finally decided by the Privy Council (5 I.T.C.).

The Head Office of the Company is Melbourne (Australia). Branches in India—Calcutta and Bombay. Company is limited by guarantee and has no share capital. Every person who insures

his life with the Company under a participating policy is deemed to have become a member of the Company. The surplus profit is distributed amongst the members.

The Company's Articles provide that triennial actuarial valuation is made by the Actuary for all its business and the surplus profits for three years thus ascertained are distributed amongst the participating policy-holders.

The Company while making a return of its income from its British Indian business for the accounting year submitted with the return a revenue account and balance sheet for that year. The Income-tax Officer in assessing under section 23(4) proceeded under rule 35 but ignoring altogether the principle of Style's case, made a calculation entirely ignoring the non-participating premiums received, including the whole amount of consideration received in respect of annuities, deducting nothing in respect of their or in respect of the Company's liabilities or expenses of non-participating business.

The Privy Council decided that—

(1) Income-tax Officer was justified in resorting to rule 35 and therefore computation on the basis of the triennial valuation reports was the most reliable method of computation in the case of Life Insurance Companies.

Here the right of the Income-tax Officer was established.

(2) The assessment was not valid or legal assessment inasmuch as the total income, profits or gains of the Companies referred to in rule 35 was the income, profits or gains as they would be ascertained *for the purpose of the Act* and even accepting the contention of the Bombay High Court that the premium income referred to in rule 35 includes premiums received in respect of participating policies, the total income referred to was the incomes and gains as ascertained for the purposes of the Act. In other words in calculating such incomes for rule 35, the premiums received from participating policies should be excluded (as per Style's case).

Note:—

The Central Board of Revenue accepted that Style's case applies in India.

Applying rule 35, I.T.O. assessed the Company as follows:—

|  |   |           |
|--|---|-----------|
| (1) Premiums of the Company as a whole for the year ended 30. 9. 30. ...                                       | £ | 3,244,476 |
| (2) Premiums of the Company in British India for the same period ...   |   | 87,942    |
| (3) Net assessable profit of the Company as a whole based on the triennial investigations as at 30. 9. 28. ... |   | 1,405,027 |
| Proportionately, profit of British India (converted in Indian Currency—Rs. 5,14,020.)                          |   | 38,083    |



*Millowners Mutual Insurance Association v. C.I.T., Bombay.* This Mutual Insurance Company was limited by guarantee without any share capital. Articles provided ascertainment of profits after 3 years but profits to be distributed to only such members as would be enrolled during the first 2 years. It was decided that the surplus of the calls, premiums or any further sum received by the Company from its members *over* its expenditure for the year, was not assessable to tax under the Act.

In *Lakshmi Insurance Co. v. C.I.T., Punjab.* It was decided that no assessment can be made until the first valuation has been made.

In *Bharat Insurance Co. v. C.I.T., Punjab,* the High Court decided that profits allotted to participating policy-holders of an Insurance Company are profits of the Company and not expenditure incurred for earning profits and are assessable to Income-tax.

## SOCIAL CLUB

The income of a social club is not liable to be taxed except in so far as it deals with outsiders and makes profits. The members in such cases pay themselves certain sums of money for certain pastimes, amenities and conveniences and if they overcharge themselves the surplus which is applied to providing conveniences cannot be called profit as the members cannot trade with themselves and make profit.

In the *Royal Calcutta Turf Club v. Secretary of State* it was decided that

- (1) entrance fee to the stand paddocks and gate money,
- (2) entrance fee paid by owners of horses,
- (3) book-makers' licence fee,
- (4) percentage of totalisation,

were taxable.

*Madras Critical Club (1934).* It took lease of a land from Government and erected a building. Though the club contended that they were not the owners of the land

still it was held that the assessee was taxable as owner under section 9 of the Act.

*Illustration :*                      **TEA COMPANY**

*Crop account for the period 1. 1. 1935 to 31. 12. 1935.*

| To cost of production :—                       | £      |             | £      |
|--|--------|-------------|--------|
| Cultivation ... ..                             | 2,400  | By Tea sale | 49,872 |
| Manure ... ..                                  | 1,600  |             |        |
| Crop Expenses ... ..                           | 2,000  |             |        |
| Tea chests ... ..                              | 1,800  |             |        |
| European Establishment ...                     | 3,000  |             |        |
| Indian Establishment ...                       | 1,600  |             |        |
| Stores and* Implements ...                     | 600    |             |        |
| Livestock and Motor trans-<br>port ... ..      | 575    |             |        |
| *Buildings ... ..                              | 51     |             |        |
| Roads and bridges ... ..                       | 125    |             |        |
| General charges ... ..                         | 340    |             |        |
| Land Rent ... ..                               | 185    |             |        |
| Law charges in India ... ..                    | 155    |             |        |
| Coolie expenses ... ..                         | 290    |             |        |
| Insurance of Factory buildings                 | 150    |             |        |
| Loss of Profit Insurance ...                   | 272    |             |        |
| *Machinery ... ..                              | 42     |             |        |
| Manager's Commission ... ..                    | 750    |             |        |
| Exchange ... ..                                | 50     |             |        |
| Crop rights ... ..                             | 400    |             |        |
| Brokerage and Sale Expenses<br>in India ... .. | 630    |             |        |
| Freight up to Calcutta ... ..                  | 320    |             |        |
| London charges :—                              |        |             |        |
| Freight ... ..                                 | 2,020  |             |        |
| Dock charges ... ..                            | 360    |             |        |
| Insurance Marine ... ..                        | 90     |             |        |
| Brokerage and sale expenses                    | 1,050  |             |        |
| Agent's allowances and com-<br>mission ... ..  | 1,200  |             |        |
| Office expenses ... ..                         | 600    |             |        |
| Directors' Remuneration ...                    | 300    |             |        |
| Profit ... ..                                  | 26,917 |             |        |
|  | 49,872 |             | 49,872 |

\* The two items Buildings and Machinery have been found to be capital expenditure.

*Profit and Loss Account.*

|   |                |                    |                |
|---|----------------|--------------------|----------------|
| To Balance transferred to Balance Sheet | £27,767        | Profit on Crop A/c | £26,917        |
|   |                | Interest in U.K.   | £600           |
|   |                | Interest in India  | £250           |
|   |                |                    | £850           |
|   | <u>£27,767</u> |                    | <u>£27,767</u> |

*For Income-tax:—*

|                            |         |  |                |
|----------------------------|---------|--|----------------|
| Profit as per crop account | ...     |  | £26,917        |
| Add back New buildings     | ... £51 |  |                |
| New Machinery              | ... £42 |  | £93            |
|                            |         |  | <u>£27,010</u> |
| Add Interest in India      | ...     |  | £250           |
|                            |         |  | <u>£27,260</u> |

£27,260 to be converted into rupees at the rate of 1s. 6d.

∴ Rs. 3,63,467

40% of Rs. 3,63,467 = Rs. 1,45,387 is liable to tax in case of tea concerns (Total Income).

|                                       |     |            |    |   |
|---------------------------------------|-----|------------|----|---|
| Income-tax at 26 pies on Rs. 1,45,387 | ... | Rs. 19,687 | 13 | 0 |
| Add surcharge 1/12                    | ... | Rs. 1,640  | 10 | 0 |
|                                       |     | Rs. 21,328 | 7  | 0 |

*For Super-tax:—*

|                       |     |                   |    |   |
|-----------------------|-----|-------------------|----|---|
| Total Income          | ... | Rs. 1,45,387      |    |   |
| Less                  | ... | Rs. 50,000        |    |   |
|                       |     | <u>Rs. 95,387</u> |    |   |
| Rs. 95,387 at 12 pies | ... | Rs. 5,961         | 11 | 0 |
| Surcharge 1/12        | ... | Rs. 496           | 13 | 0 |
|                       |     | <u>Rs. 6,458</u>  | 8  | 0 |

As surcharge does not illustrate any principle of law or accounts, it has not been counted in the problems of this book except in a few cases to show its working.

**Note:—**

(1) Where tea seed is produced for the assessee it will be included in the profits.

(2) Where tea seed is sold to a third party no tax will be levied.

(3) The whole cost of up-keep of extensions of the Estate which are not in bearing will be allowed as expense, *e.g.*, weeding, draining.

(4) Capital Expenditure, *e.g.*, acquisition, clearing and draining of the land, making of roads, erection of buildings before cultivation begins are not allowed as a charge against profits.

(5) When planting is completed, the annual cost of up-keep of such extensions should be allowed.

(6) Expenditure on the maintenance of an area that has not reached maturity is a Revenue Expenditure.

(7) Any expenditure that creates a potential source of recurring revenue at whatever stage in the development of Estate is Capital Expenditure.

Tea bushes are potential sources of revenue.

(8) The cost of planting bushes in replacement of bushes that have died or become permanently useless in an area already planted will be allowed as expense.

If an assessee gets dividend from a Tea Company (limited) of Rs. 3,400, his gross income is Rs. 3,932-8-6. While the Tea Company pays Income-tax on profits derived partly from Agriculture and partly from industry and therefore a percentage (40%), according to rule, will be taxed; it must be remembered that an individual should be taxed on his entire receipt, *i.e.*, 100% from investment—no matter whether it is Tea or Sugar or any other industry (though present practice is different).

**STERLING INSURANCE COMPANY WITH BRANCH IN  
INDIA**

Devonshire Life Assurance Co., Ltd., has a surplus of £1,500,000 as per its annual valuation report inclusive of £300,000 brought forward from previous year. Out of this amount the Company appropriates £100,000 to Investment Revenue Fund. The following is the Revenue Account after incorporation of the branch profits.

*Revenue Account.*

|                                | £         | Claims:—                        | £         | £         |
|--------------------------------|-----------|---------------------------------|-----------|-----------|
| Life Assurance Fund ...        | 1,566,626 | By death                        | 2,370,000 |           |
| Premiums .. .. .               | 5,400,000 | By maturity                     | 2,290,000 |           |
| Interest Divs.<br>and Rent ... | 1,200,000 |                                 |           | 4,660,000 |
| Less Income-<br>tax thereon    | 250,000   | Surrenders ... .. .             |           | 908,099   |
| Fines and fees ... .. .        | 201       | Expenses of manage-<br>ment     |           | 730,000   |
|                                | 950,000   | Commission ... .. .             |           | 10,000    |
|                                |           | Annuities ... .. .              |           | 3,608     |
|                                |           | Fund at the end of the<br>year. |           | 1,605,120 |
|                                | 7,916,827 |                                 |           | 7,916,827 |

*Working:—*

|  | £         |
|--|-----------|
| Surplus as per actuarial valuation ...                             | 1,500,000 |
| Less balance brought forward from<br>previous year ... .. .        | 300,000   |
|  | 1,200,000 |
| Less Transfer to Investment Revenue<br>Fund as per report ... .. . | 100,000   |
|  | 1,100,000 |
| Add Income-tax on Interest, Divs. &<br>Rents ... .. .              | 250,000   |
|  | 1,350,000 |

- |                                  | £          |
|----------------------------------|------------|
| 1. Total world premium ...       | 5,400,000  |
| of which Indian Premium (say)    | 10,800     |
| 2. Total valuation surplus being | £1,350,000 |

find out the Indian surplus (profits for Income-tax purposes) from £1,350,000 in the proportion disclosed by item (1) above.

Indian profit would thus be £2,700.

Rate of conversion being 1s. 6d. to the rupee,  
£2,700 = Rs. 36,000.

Rs. 36,000 is the Total Income.

|                                     |     |           |   |                      |
|-------------------------------------|-----|-----------|---|----------------------|
| Income-tax at 26 pies on Rs. 36,000 | ... | Rs. 4,875 | 0 | 0                    |
| Add surcharge 1/12                  | ... | Rs. 406   | 4 | 0                    |
|                                     |     |           |   | <u>Rs. 5,281 4 0</u> |

*Illustration:*

From the following particulars find out I./T. payable:—

|   | Rs. | a.     | p.          |
|---|-----|--------|-------------|
| (1) Salary received per month net                                   | ... | 233    | 12 0        |
| (2) Grocery profit as per P. & L. A/c                               | ... | 780    | 0 0         |
| (3) Property—annual letting value                                   | ... | 1,500  | 0 0         |
| (4) U.P. Trading Co., Ltd., declared<br>6% dividends free of tax on | ... | 14,500 | 0 0         |
| (5) 5% War Loan free of tax on                                      | ... | 3,500  | 0 0         |
| (6) 7% War Bonds on   | ... | 1,000  | 0 0         |
| (7) The assessee pays Life Insurance<br>premium                     | ... | 1,450  | 0 0 yearly. |

*Statement of Total Income.*

|                             | Gross. |       | Tax deducted. |         |
|-----------------------------|--------|-------|---------------|---------|
|                             | Rs.    | a. p. | Rs.           | a. p.   |
| (1) Salary                  | ...    | 2,895 | 0 0           | 90 0 0  |
| (2) Grocery                 | ...    | 780   | 0 0           |         |
| (3) Property 1,500          |        |       |               |         |
| Less 1/6 250                |        | 1,250 | 0 0           |         |
| (4) 6% on Rs. 14,500 (F.T.) | ...    | 1,006 | 0 0           | 136 0 0 |
| (5) 5% on Rs. 3,500 (F.T.)  | ...    | 175   | 0 0           | Nil.    |
| (6) 7% on Rs. 1,000 (L.T.)  | ...    | 70    | 0 0           | 9 7 8   |

Total Income ... 6,176 0 0      235 7 8

rate 9 pies.

Total Income ... Rs. 6,176  
Less 1/6 of Rs. 6,176 = Rs. 1,029 ... Rs. 1,029

Rs. 5,147  
Less Income from F.T. Security ... Rs. 175

Rs. 4,972  
Rs. 4,972 at 9 pies ... Rs. 233 1 0  
Less already paid ... Rs. 235 7 8

Refundable ... Rs. 2 6 8

*Illustration:*

From the following particulars find out Income-tax payable by A:—

|  |           |
|--|-----------|
| (a) Income from 4% War Bonds (tax-free) ...  | Rs. 3,400 |
| (b) Interest from Bank deposit ...   | Rs. 500   |
| (c) Dividends from R. N. Co., Ltd. 9% (less tax) ...   | Rs. 9,918 |
| (d) Director's fees (gross) received ...   | Rs. 1,000 |
| (e) Profits (agreed with I.T.O.) from a registered Firm ...                                    | Rs. 700   |
| (f) Dividends from A.B.C. Co., Ltd. 7% (tax-free) ...  | Rs. 2,987 |
| (g) Profit from an unregistered Firm representing $\frac{1}{3}$ share (agreed with I.T.O.) ... | Rs. 600   |
| (h) Salary as Secretary per month ...  | Rs. 200   |
| (i) He pays Life Insurance premium annually ...  | Rs. 4,050 |
| (j) Income from 5% War Loan (less tax) ...   | Rs. 754   |

*Statement of Total Income.*

| Particulars of Income.                          | Gross.<br>Rs. | Tax deducted.<br>Rs. |
|---|---------------|----------------------|
| (a) 4% War Bonds (tax-free) ...                 | 3,400         | Nil.                 |
| (b) Interest from Bank deposit ...              | 500           | Nil.                 |
| (c) Dividends from R.N. Co., Ltd. 9% (L.T.) ... | 11,471        | 1,553                |
| (d) Director's fees ...                         | 1,000         | Nil.                 |
| (e) Registered firm profits ...                 | 700           | 95                   |
| (f) Dividends A.B.C. Co., Ltd. 7% (F.T.) ...    | 3,455         | 468                  |
| (g) Unregistered Firm $\frac{1}{3}$ share ...   | 600           | Nil.                 |
| (h) Secretary Rs. 200 p.m. ...                  | 2,400         | 75                   |
| (i) 5% War Loan (L.T.) ...                      | 872           | 118                  |
| <b>Total income</b> ...                         | <b>24,398</b> | <b>2,309</b>         |

Rate determined being 19 pies.

|                           |                     |
|---------------------------|---------------------|
| Total Income ...          | Rs. 24,398          |
| Less L.I.P. ...           | Rs. 4,050           |
|                           | <u>Rs. 20,348</u>   |
| Less War Bonds ...        | Rs. 3,400           |
|                           | <u>Rs. 16,948</u>   |
| Rs. 16,948 at 19 pies ... | Rs. 1,677 2 0       |
| Already paid ...          | Rs. 2,309 0 0       |
| Refundable to A ...       | <u>Rs. 631 14 0</u> |

*Illustration :*

The Profit and Loss Account of A.B. Co., Ltd., is as follows:—

|   | Rs.      |   | Rs.      |
|---|----------|---|----------|
| Salaries ...                                      | 33,000   | Gross Profit ...  | 1,45,000 |
| Rent ...  | 5,500    | Sundry receipts ...   | 5,750    |
| Trade Expenses ...                                | 13,500   | Rent from sub-letting                                       | 500      |
| Debenture Interest                                | 6,000    | Premium on shares   | 1,500    |
| Preliminary Expenses ...                          | 7,500    | Govt. subsidy for development of the Company's industry ... | 8,000    |
| Loss on sale of investments ...                   | 3,500    | Dividends (Gross) ...                                       | 20,000   |
| Income-tax (previous years' final adjustment) ... | 4,000    |   |          |
| <i>Depreciation—</i>                              |          |   |          |
| Plant 10% ...                                     | 7,500    |   |          |
| Furniture 5% ...                                  | 250      |   |          |
| Net Profit ...                                    | 1,00,000 |   |          |
|   | 1,80,750 |   | 1,80,750 |

Ascertain Income-tax and Super-tax payable (if any). The claim for depreciation is fully allowed.

*Profit and Loss Adjustment Account.*

|                      | Rs.      |                                   | Rs.      |
|----------------------|----------|-----------------------------------|----------|
| To premium on shares | 1,500    | By Net Profit ...                 | 1,00,000 |
| „ Govt. Subsidy ...  | 8,000    | „ Preliminary Expense ...         | 7,500    |
| „ Dividends ...      | 20,000   | „ Loss on sale of investments ... | 3,500    |
| „ Adjusted Profits   | 85,500   | „ Income-tax ...                  | 4,000    |
|                      | 1,15,000 |                                   | 1,15,000 |

|                                       |                |               |  |
|---------------------------------------|----------------|---------------|--|
| Business Income ...                   | Rs. 85,500     |               |  |
| Add gross income from investments ... | Rs. 20,000     |               |  |
|                                       | Rs. 1,05,500   | Total Income. |  |
| Tax at 26 pies on Rs. 1,05,500        | Rs. 14,286 7 4 |               |  |
| Less Tax paid on Dividends ...        | Rs. 2,708 5 4  |               |  |
|                                       | Rs. 11,578 2 0 |               |  |

*Super-tax.*

|                    |              |                  |  |
|--------------------|--------------|------------------|--|
| Total Income ...   | Rs. 1,05,500 |                  |  |
| Less Exemption ... | Rs. 50,000   |                  |  |
|                    | Rs. 55,500   | at 1 anna        |  |
|                    |              | = Rs. 3,468-12-0 |  |



*Note.*—Dividends could not have been received gross. Tax was deducted. But gross dividends have been put in the P. & L. A/c to illustrate that even if gross figure is found in the P. & L. A/c an item of another source should be written back.

*Illustration :*

From the following particulars find out the income-tax payable by A:—

- (a) Profits from an unregistered Firm representing half share Rs. 900.
- (b) Income from 4% War Bonds (Tax-free) ... Rs. 3,600.
- (c) Dividends from A. Ltd. 7% (Tax-free) ... Rs. 5,974.
- (d) Income from 5% War Loan (Less Tax) ... Rs. 1,508.
- (e) A wins a prize in a lottery Rs. 2,000.
- (f) His life insurance premium amounts to . . Rs. 3,000 annually.

|   | Gross.        |           |          | Tax deducted. |           |          |
|---|---------------|-----------|----------|---------------|-----------|----------|
|   | Rs.           | a.        | p.       | Rs.           | a.        | p.       |
| (1) Unregistered Firm ...                                   | 900           | 0         | 0*       |               |           |          |
| (2) Income 4% War Bond (F/T)                                | 3,600         | 0         | 0        |               |           |          |
| (3) Divs. A, Ltd. 7% (F/T)<br>(5974 × $\frac{1}{100}$ ) ... | 6,909         | 11        | 0        | 935           | 11        |          |
| (4) Int. 5% War Loan (L/T)<br>(1508 × $\frac{1}{100}$ ) ... | 1,744         | 3         | 0        | 236           | 3         | 0        |
| <b>Total Income</b> ...                                     | <b>13,153</b> | <b>14</b> | <b>0</b> | <b>1,171</b>  | <b>14</b> | <b>0</b> |
|   | @ 12 pies.    |           |          |               |           |          |

|                     |                    |                  |
|---------------------|--------------------|------------------|
|                     | Rs.                |                  |
| Total Income        | ... 13,154         |                  |
| Less L.I.P.         | ... 2,192          |                  |
|                     | 10,962             |                  |
| Less War Bonds F/T  | 3,600              |                  |
|                     | 7,362              | Taxable at -/1/- |
|                     |                    | Rs. 460 2 0      |
| Already paid        | ... Rs. 1,171 14 0 |                  |
| To be refunded to A | ... Rs. 711 12 0   |                  |

\* No tax was deducted from unregistered Firm as its income was less than Rs. 2,000. Therefore his share of the unregistered Firm profits will be included in the Total Income of the assessee and be taxed.

*Illustration:*

A and B carry on a business as an unregistered firm. They share equally. Their Profit and Loss Account for 1925 is as follows:—

|  | Rs.   | Rs.   |                  | Rs.   |
|--|-------|-------|------------------|-------|
| To Rent  |       | 450   | By Gross Profit  | 7,500 |
| To Rates, etc.                                   |       | 40    | By Bad Debts re- |       |
| To Salaries, A                                   | 300   |       | covered          | 70    |
| To Salaries, B                                   | 500   |       |                  |       |
|  | <hr/> | 800   |                  |       |
| To Interest on Capital, A ...                    | 160   |       |                  |       |
| To Interest on Capital, B ...                    | 190   |       |                  |       |
|  | <hr/> | 350   |                  |       |
| To Bad Debts Reserve                             |       | 125   |                  |       |
| To Depreciation of Machinery and Furniture at 7% |       | 140   |                  |       |
| To Net Profit                                    |       | 5,665 |                  |       |
|  |       | <hr/> |                  |       |
|  |       | 7,570 |                  | <hr/> |
|  |       |       |                  | 7,570 |

Depreciation at 5% allowed by I.T.O.

|   | Rs.   |
|---|-------|
| B has an income from the following:—  |       |
| (1) Dividends from A.B.C.Co., Ltd., 9% (less tax) ...                                     | 3,400 |
| (2) Fees as Director ...  | 1,800 |
| (3) Interest from 5% War Bond (Tax-free) ...  | 3,200 |
| (4) Dividends from X.Y.Co., Ltd., 6% (Tax-free) ...                                       | 2,987 |
| (5) Profits (agreed to by I.T.O.) from a registered Firm representing one-third share ... | 400   |

Find out from the above the income-tax payable by B.

*Profit and Loss Adjustment A/c.*

|                      | Rs.   | Rs.                      | Rs.   |
|----------------------|-------|--------------------------|-------|
| To assessable Profit | 6,980 | By Net Profit            | 5,665 |
|                      |       | By Salaries A            | 300   |
|                      |       | By Salaries B            | 500   |
|                      |       |                          | <hr/> |
|                      |       | By Interest on Capital A | 160   |
|                      |       | Capital B                | 190   |
|                      |       |                          | <hr/> |
|                      |       | By Bad Debts Reserve     | 125   |
|                      |       | By Depreciation 2%       | 40    |
|                      |       |                          | <hr/> |
|                      | <hr/> | -                        | 6,980 |
|                      | 6,980 |                          | <hr/> |

*Equitable Adjustment:—*

|                      |         |                  |
|----------------------|---------|------------------|
| Firm Income          | ...     | Rs. 6,980        |
| Less salaries        | Rs. 800 |                  |
| Less Int. on Capital | Rs. 350 |                  |
|                      | ---     | Rs. 1,150        |
|                      |         | <u>Rs. 5,830</u> |

|   | Salary. | Interest. | Firm. | Total. |
|---|---------|-----------|-------|--------|
| A | 300     | 160       | 2915  | 3375   |
| B | 500     | 190       | 2915  | 3605   |

|   | B's income. | Gross.            | Tax deducted.    |
|---|-------------|-------------------|------------------|
|   | Rs.         | Rs. a. p.         | Rs. a. p.        |
| (1) A. B. Co., Ltd., 9%<br>(less tax) ... | 3,400       | 3,932 8 6         | 532 8 6          |
| (2) Director's fees ...                   | 1,800       | 1,800 0 0         | Nil.             |
| (3) 5% War Bond (tax-free) ...            | 3,200       | 3,200 0 0         | Nil.             |
| (4) X. Y., Ltd., 6% (tax-free) ...        | 2,987       | 3,454 13 6        | 467. 13 6        |
| (5) Registered firm 1/3 share ...         | 400         | 400 0 0           | 54 2 8           |
| * (6) Unregistered firm ...               | 3,605       | 3,605 0 0         | taxed separately |
|   |             | <u>16,392 6 0</u> | <u>1,054 8 8</u> |

∴ rate 16 pies.

Total income ... .. Rs. 16,392 6 0

Less unregistered firm Rs.3,605

Less tax-free W.B. Rs.3,200

Rs. 6,805 0 0

Rs. 9,587 0 0 @ 16 pies.

=Rs. 798 15 2

Rs. 1,054 8 8  
already paid.

Rs. 255 9 6  
refundable to B.

\* Unregistered firm profits must enter the total income. Tax has been deducted. But no refund being allowable it has not been included in the "Tax deducted" column.

*Illustration :*

K and L are equal partners in a registered firm whose assessable net profit amounts to Rs. 49,000. K has invested Rs. 15,000 in 7% Calcutta Port Trust Bonds and Rs. 20,000 in 5½% (Tax-free) War Loan. He is a retired Government Engineer and gets a pension of Rs. 560 per month. He also received Rs. 300 as Director's fees.

L owns three shops the annual letting value of which amounts to Rs. 360 each.

State what amount of Income-tax and Super-tax each partner will have to pay.

|  | K            |               | L             |               |
|--|--------------|---------------|---------------|---------------|
|  | Gross.       | Tax deducted. | Gross.        | Tax deducted. |
| (1) Share of Registered Firm.                | 24,500       | 3,317-11-0    | 24,500        | 3,317-11-0    |
| (2) 7 % Port Trust Bonds for Rs. 15,000.     | 1,050        | 142-3-0       |               |               |
| (3) 5½ % (Tax-free) War Loan for Rs. 20,000. | 1,100        | Nil.          |               |               |
| (4) Pension Rs. 560 p. m.                    | 6,720        | 315-0-0       |               |               |
| (5) Director's fees ...                      | 300          |               |               |               |
| (6) Shop-annual value Rs. 1,080.             |              |               |               |               |
| Less ... 180.                                |              |               |               |               |
| 900.   | ...          | ...           | 900           | Nil.          |
| Total Income Rs. ...                         | 33,670-0-0   | 3,774-14-0    | 25,400        | 3,317-11-0    |
|  | rate 23 pies | ...           | rate 19 pies. |               |

*K's assessment I/T.*

|                   |     |                |
|-------------------|-----|----------------|
| Total Income      | ... | Rs. 33,670 0 0 |
| Less F/T War Loan | ... | Rs. 1,100 0 0  |
| Taxable           | ... | Rs. 32,570 0 0 |
| Hence, tax        | ... | Rs. 3,901 10 0 |
| Less already paid | ... | Rs. 3,774 14 0 |
| Still to pay      | ... | Rs. 126 12 0   |

*Super-tax.*

|              |     |     |            |            |   |
|--------------|-----|-----|------------|------------|---|
| Total Income | ... | ... | Rs. 33,670 | 0          | 0 |
| Exemption    | ... | ... | Rs. 30,000 | 0          | 0 |
|              |     |     | Rs. 3,670  | 0          | 0 |
|              |     |     |            | at 9 pies. |   |
| Hence, S./T. | ... | ... | Rs. 172    | 0          | 0 |

*L's assessment I/T.*

|                       |     |     |            |    |   |
|-----------------------|-----|-----|------------|----|---|
| Total Income          | ... | ... | Rs. 25,400 | 0  | 0 |
| Hence, tax at 19 pies | ... | ... | Rs. 2,513  | 8  | 0 |
| Less already paid     | ... | ... | Rs. 3,317  | 11 | 0 |
|                       |     |     | Rs. 804    | 3  | 0 |

To be refunded to L.

Not liable to Super-tax.

*Illustration :*

A owns a large building in Bombay <sup>BCMS</sup> paying a rent of Rs. 30,500 per annum. The net annual value of the property as per municipal assessment bills is Rs. 26,100. A wishes to have the following deductions made before arriving at the taxable income in respect of the above property:—

- (a) Rs. 5,000 for repairs during the year.
- (b) Rs. 250 being fire insurance premium paid.
- (c) Rs. 200 being the annual ground rent paid.
- (d) Rs. 1,800 for collection charges paid.
- (e) Rs. 1,500 being municipal taxes paid.
- (f) Rs. 1,200 being interest on a mortgage.
- (g) Rs. 500 being the rent of a portion of the house that was vacant during the year.

You are required to prepare a statement, showing the taxable income of A in respect of the above house property.

A's taxable income from business amounts to Rs. 53,625. He has insured his life and pays an annual premium of Rs. 15,600. He has received during the year dividends from joint-stock companies amounting to Rs. 8,700 declared free of tax and Rs. 2,900 declared less tax. Determine the income-tax and super-tax (if any) payable by him.

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*House Property:—*

|                          | Rs.   | Rs.    |
|--------------------------|-------|--------|
| Actual rent realised ... |       | 30,500 |
| Less 1/6 for repairs ... | 5,083 |        |
| „ Fire Insurance ...     | 250   |        |
| „ Ground Rent ...        | 200   |        |
| „ Collection Charges ... | 1,800 |        |
| „ Mortgage Interest ...  | 1,200 |        |
| „ Vacancy allowance ...  | 500   |        |
|                          | <hr/> | 9,033  |
|                          |       | <hr/>  |
|                          |       | 21,467 |

*Statement of A's Income from all sources:—*

|   | Gross Income. | Tax paid.      |
|---|---------------|----------------|
|   | Rs. a. p.     | Rs. a. p.      |
| (1) Income from Business ...                  | 53,625 0 0    |                |
| (2) Income from House Property ...            | 21,467        |                |
| (3) Income from Securities ...                |               |                |
| (a) Tax-free Jt. Stock Divs.                  | 10,062 11 0   | 1,362 11 0     |
| (b) Less Tax Jt. Stock Divs.                  | 3,354 3 0     | 454 3 0        |
|   | <hr/>         | <hr/>          |
| Total Income ...                              | 88,508 14 0   | 1,816 14 0     |
| (Rate 25 pies)                                |               |                |
| Deduct L.I.P. ...                             | 14,751 8 0    |                |
|   | <hr/>         |                |
|   | 73,757 6 0    |                |
| Tax on Rs. 73,757 at 25 pies in the rupee ... |               | Rs. 9,603 12 0 |
| Less Tax already paid ...                     |               | Rs. 1,816 14 0 |
|   |               | <hr/>          |
|   |               | Rs. 7,786 14 0 |

∴ Rs. 7,786-14-0 still to be paid by A on the assumption that business has not been separately assessed.

Municipal Tax is not allowed as a deduction.

*Statement for Super-tax.*

|                             |                                  |
|-----------------------------|----------------------------------|
| Total Income ...            | Rs. 88,508 14 0                  |
| Rs. 30,000 ...              | Rs. Nil.                         |
| Rs. 20,000 at 9 pies ...    | Rs. 937 8 0                      |
| Rs. 38,508-14-0 at -1/3 ... | Rs. 3,008 8 0                    |
|                             | <hr/>                            |
|                             | Rs. 3,946 0 0 Super-tax payable. |

*Illustration :*

**NAROTTAM DAS, SHAREBROKER, CALCUTTA.**

*Revenue and Profit and Loss account.*

|                           | Rs.           |                         | Rs.           |
|---------------------------|---------------|-------------------------|---------------|
| Establishment ...         | 13,040        | Brokerage ...           | 45,000        |
| Bonus to staff ...        | 1,500         | Directors' fees ...     | 2,000         |
| Depreciation :            |               | Directors' Commission   | 3,000         |
| Office cars   Rs. 400     |               | Dividends ...           | 5,974         |
| Furniture ... Rs. 200     |               | Interest :—             |               |
|                           | 600           | Govt. Securities,       |               |
| Taxi hire, tram, etc. ... | 300           | Bonds ...               | 1,508         |
| Law charges ...           | 250           | Debentures, etc. ...    | 908           |
| Auditors' fees ...        | 550           | Interest on balances of |               |
| Membership of the         |               | partners 400            |               |
| Calcutta Stock Ex-        |               | Interest allow-         |               |
| change Association        | 500           | ed by Bank 500          |               |
| Subscription ...          | 50            |                         | 900           |
| Advertisements ...        | 300           |                         |               |
| Medical expenses ...      | 250           |                         |               |
| Office car upkeep ...     | 1,000         |                         |               |
| Telephone ...             | 400           |                         |               |
| Electric charges ...      | 150           |                         |               |
| Books and papers ...      | 600           |                         |               |
| Telegrams ...             | 800           |                         |               |
| Stationery and printing   | 450           |                         |               |
| Weekly share market       |               |                         |               |
| report ...                | 150           |                         |               |
| Stamps and postage ...    | 450           |                         |               |
| Contract stamps ...       | 200           |                         |               |
| Office rent ...           | 3,000         |                         |               |
| Donation ...              | 50            |                         |               |
| Tiffin expenses ...       | 400           |                         |               |
| Calcutta money market     |               |                         |               |
| report ...                | 100           |                         |               |
| Commission to under-      |               |                         |               |
| brokers ...               | 600           |                         |               |
| Retired partners'         |               |                         |               |
| allowance ...             | 5,000         |                         |               |
| Net profit ...            | 28,600        |                         |               |
|                           | <u>59,290</u> |                         | <u>59,290</u> |

*Revenue and P. & L. Adjustment Account.*

|   | Rs.          |                                   | Rs.          |
|---|--------------|-----------------------------------|--------------|
| To Directors' fees ...                      | 2,000        | By Net Profit ...                 | 28,600       |
| „ Directors' commission ...                 | 3,000        | „ Depreciation ...                | 600          |
| „ Dividends ...                             | 5,974        | „ Donation ...                    | 50           |
| „ Interest on Securities and Debentures ... | 2,416        | „ Proprietor's tiffin ...         | 200          |
| „ Adjusted Profits ...                      | 21,060       | „ Retired Partner's allowance ... | 5,000        |
|   | <hr/> 34,450 |                                   | <hr/> 34,450 |

|  |               |
|--|---------------|
| Business Income as adjusted ...                  | Rs. 21,060    |
| Less Depreciation:—                              |               |
| Depreciation allowed last year ...               | Rs. 425       |
| Add Depreciation on addition of Furniture 5% ... | Rs. 75        |
|  | <hr/> Rs. 500 |
|  | Rs. 20,560    |

## Statement of Total income:—

|                                       |                                |
|---------------------------------------|--------------------------------|
| Business ...                          | Rs. 20,560 0 0                 |
| Interest on Securities and Debentures |                                |
| Gross ...                             | Rs. 1,744 3 0                  |
| „ ...                                 | Rs. 1,050 5 0                  |
|                                       | Rs. 2,794 8 0                  |
| Directors fees ...                    | Rs. 2,000 0 0                  |
| Directors' commission ...             | Rs. 3,000 0 0                  |
| Dividends ...                         | Rs. 6,909 11 0                 |
|                                       | <hr/>                          |
| Total Income ...                      | Rs. 35,264 3 0 ∴ rate 23 pies. |

|                                   |                     |
|-----------------------------------|---------------------|
| Tax at 23 pies ...                | Rs. 4,224 5 0       |
| Less paid on Dividends ...        | Rs. 935 11 0        |
| on Interest on Govt. Bonds        | Rs. 236 3 0         |
| on Int. on Deb. ...               | Rs. 142 5 0         |
|                                   | <hr/> Rs. 1,314 3 0 |
| Still payable by the assessee ... | Rs. 2,910 2 0       |

**Note:—**

(1) The procedure in the Income-tax Department is to write back Depreciation and then to allow depreciation



according to the Scheduled rate as per a running statement maintained in the file from the time the asset is acquired.

Depreciation on office car is allowed.

(2) Law charges have been accepted by the I.T.O. as revenue expenditure.

(3) Membership fee paid to the association of the Assessee's own profession is an essential charge in P. & L. A/c.

(4) Advertisements made in respect of sale of shares etc., are allowed.

(5) Car up-keep (*i.e.*, cost of running and maintenance) is allowed.

(6) Books and papers in connection with professional work when replaced are allowed.

(7) Retired partner's allowance is not allowed.

(8) Fees and Commissions earned by the assessee as Director of other Companies should be separated from the business income.

THE NEW GORAKHPUR SUGAR & GUR REFINING  
CO., LTD.

*Trading and Profit and Loss Account.*

|                                      | Rs.      |                                    | Rs.      |
|--------------------------------------|----------|------------------------------------|----------|
| To stock of sugar and molasses ...   | 2,00,000 | By sugar sales                     | 4,25,000 |
| To Manufacturing and other charges:— |          | By molasses sales                  | 7,650    |
| Sugar-cane purchase                  | 1,25,000 |                                    | 4,32,650 |
| Lime ...                             | 750      | By Stock of sugar and molasses ... | 2,00,000 |
| Sulphur ...                          | 450      |                                    |          |
| Filter press cloth ...               | 300      |                                    |          |
| Stores ...                           | 500      |                                    |          |
| Coal ...                             | 3,500    |                                    |          |
| Firewood ...                         | 1,500    |                                    |          |
| Gunny bags ...                       | 1,200    |                                    |          |
| F. 25                                |          |                                    |          |

|   | Rs.      | Rs.      |
|---|----------|----------|
| Laboratory stores ...                   | 450      |          |
| Manufacturing acids ...                 | 150      |          |
| Lubricants, etc. ...                    | 550      |          |
| Salaries and wages ...                  | 25,000   |          |
| *Cane growing ...                       | 72       |          |
| Medical charges ...                     | 1,528    |          |
| *Law charges ...                        | 300      |          |
| P r i n t i n g and<br>stationery ...   | 350      |          |
| Travelling expenses ...                 | 1,250    |          |
| Charges general ...                     | 17,750   |          |
| Repairs and renewals ...                | 3,500    |          |
| Rents ...                               | 3,600    |          |
| Insurance ...                           | 400      |          |
| Interest ...                            | 250      |          |
| Provident Fund con-<br>tributions ...   | 1,400    |          |
| Director's fee ...                      | 1,600    |          |
| Sugar Excise Duty ...                   | 45,000   |          |
| Selling Commission ...                  | 1,500    |          |
| Managing A g e n t s'<br>allowance ...  | 600      |          |
| Managing A g e n t s'<br>commission ... | 6,000    |          |
| *Staff commission and<br>bonus fund ... | 1,200    |          |
| *Depreciation:                          |          |          |
| Building ...                            | 3,000    |          |
| Machinery ...                           | 6,000    |          |
| Electric in-<br>stallation ...          | 4,000    |          |
| Railway sid-<br>ing ...                 | 5,000    |          |
| Furniture ...                           | 1,500    |          |
| Motor cars ...                          | 2,500    |          |
|   | 22,000   |          |
| Income-tax and super-<br>tax ...        | 40,000   |          |
| Net Profit ...                          | 1,25,000 |          |
|   | 6,32,650 | 6,32,650 |

*P. & L. Adjustment Account.*

|                          | Rs. a. p.      |                  | Rs. a. p.    |
|--------------------------|----------------|------------------|--------------|
| To market value          |                | By N.P. ...      | 1,25,000 0 0 |
| of cane sugar            |                | By Deprecia-     |              |
| grown by the             |                | tion ...         | 22,000 0 0   |
| Company and              |                | By Cane-         |              |
| crushed. for             |                | growing ...      | 72 0 0       |
| manufacture              | 370 0 0        | By Bonus fund    | 500 0 0      |
| To Adjusted Profit       | 1,87,202 0 0   | By Income-tax    |              |
|                          |                | and S.T. ...     | 40,000 0 0   |
|                          |                |                  | <hr/>        |
|                          | <hr/>          |                  | 1,87,572 0 0 |
|                          | 1,87,572 0 0   |                  | <hr/>        |
| Adjusted Profit as above |                |                  | 1,87,572 0 0 |
| Less Depreciation        | ... Rs. 20,000 |                  |              |
| Less unabsorbed balance  | ... Rs. 27,572 |                  |              |
|                          |                |                  | <hr/>        |
|                          |                |                  | 47,572 0 0   |
|                          |                | Total Income ... | <hr/>        |
|                          |                |                  | 1,40,000 0 0 |
|                          |                |                  | <hr/>        |

**\*Note:—**

(1) Cane-growing cost amounts to Rs. 72 for 1,200 maunds of sugar-cane. In accordance with rule 23(I) of the I.T.M., the Company is entitled to deduct the market value of the sugar-cane produced and used for manufacture, the market value is taken to be Rs. 370.

(2) Staff commission and bonus includes a contribution of Rs. 500 to bonus fund account.

(3) According to the schedule Rs. 20,000 is allowed for Depreciation. It has been assumed that depreciation allowance of Rs. 27,572 remained unabsorbed in the previous years.

(4) I.T.O. is satisfied that law charges are a Revenue Expense.

## NORTH JALPAIGURI TEA COMPANY, LTD.

*Revenue and Profit and Loss Account for the year ended . . . . .*

|   | Rs.             |  | Rs.             |
|---|-----------------|--|-----------------|
| To Garden expenses:—  |                 | By Proceeds of the crop                |                 |
| „ European establish-<br>ment ...                                   | 60,000          | Assam 2,90,000                         |                 |
| „ Indian establish-<br>ment ...                                     | 80,000          | Doors 3,05,300                         | 5,95,300        |
| „ Cultivation ...   | 1,10,000        | „ Tea seed (5) ...                     | 1,200           |
| „ Coolie recruiting ...   | 7,000           | „ Profit on sale of<br>investments ... | 1,050           |
| „ Coolie expenses ...   | 5,000           | „ Miscellaneous re-<br>ceipt being     |                 |
| „ Stores and Tools ...  | 2,000           | Sale of sweep-<br>ings ...             | 1,500           |
| „ New buildings in-<br>cluding replace-<br>ments (1) ...            | 12,000          | Post Office<br>rent (10) ...           | 500             |
| „ New machinery in-<br>cluding replace-<br>ments (2) ...            | 15,000          | Shop rent<br>(11) ...                  | 300             |
| „ Repairs to build-<br>ings (3) ...                                 | 1,500           | Rent o f<br>p a d d y<br>lands (8) ... | 700             |
| „ Repairs to machin-<br>ery ...                                     | 1,200           | Sale o f<br>s c r a p<br>metal (9) ... | 500             |
| „ Medical expenses ...  | 2,400           |  | 3,500           |
| „ Crop expenses ...   | 4,600           |  |                 |
| „ Manufacturing and<br>packing ...                                  | 2,300           |  |                 |
| „ Tea boxes ...   | 3,500           |  |                 |
| „ Freight and charges<br>on tea ...                                 | 7,500           |  |                 |
| „ Govt. rent and cess ...   | 2,200           |  |                 |
| „ General charges ...   | 3,800           |  |                 |
| „ Insurance (hail) ...  | 250             |  |                 |
| „ Tea seed crop (4) ...   | 700             |  |                 |
| „ Surveying (6) ...   | 300             |  |                 |
| „ Purchase of export<br>licences and pro-<br>duction rights (7) ... | 1,800           |  |                 |
| To General P. & L. expenses:—                                       |                 |  |                 |
| „ Charges general in-<br>cluding rent, sala-<br>ries, etc. ...      | 70,000          |  |                 |
| „ Commission to<br>manager's and staff ...                          | 8,000           |  |                 |
| „ Net profit ...  | 2,00,000        |  |                 |
|   | <u>6,01,050</u> |  | <u>6,01,050</u> |

*Revenue and Profit and Loss Adjustment Account.*

| Rs.                                       | Rs.   |
|---|---|
| To Tea seed ... 1,200                     | By N.P. ... 2,00,000  |
| Less Tea seed<br>Crop ... 700             | By New Build-<br>ings ... 4,000   |
| 500                                       | By Extension to<br>godown in-<br>cluded under<br>repairs to<br>buildings .. 1,000 |
| To Profit on sale<br>of investments 1,050 | By New mach-<br>inery ... 2,000   |
| To Provident<br>Fund ... 14,000           | Less cost of<br>old sifters re-<br>placed ... 250                                 |
| To Rent of<br>Paddy lands ... 700         | 1,750   |
| To Sale of scrap<br>metal ... 500         | By Surveying ... 300  |
| To Income fully<br>assessable             |   |
| Post Office rent 500                      |   |
| Shop rent ... 300                         |   |
| 800                                       |   |
| To Adjusted<br>Profit ... 1,89,500        |   |
| <u>2,07,050</u>                           | <u>2,07,050</u>   |

|                             |                           |
|-----------------------------|---------------------------|
| 40% of Rs. 1,89,500         | ... Rs. 75,800 0 0        |
| Add income fully assessable | ... Rs. 800 0 0           |
| Total Income                | ... <u>Rs. 76,600 0 0</u> |

**Note:—**

(1) New Building expenditures have amounted to Rs. 4,000 and replacements Rs. 8,000.

(2) New machinery expenditures have amounted to Rs. 2,000 and replacements Rs. 13,000.

(3) Repairs to Buildings include an item of expenditure, *viz.*, extension to godown amounting to Rs. 1,000.

(4) & (5) Tea seed crop is an expenditure on Tea seeds produced—proceeds being Rs. 1,200 in the Account

above. Both these relate to agricultural income and have been eliminated from the account.

(6) Surveying has been found to be a Capital item and hence disallowed.

(7) The question of purchase of production rights is a little complicated. If the purchaser of the production rights sells out a portion to another Tea manufacturer, the entire profits thus accrued would be taxable. If the purchaser utilises the rights fully for himself then the profits will be normally shown in the accounts and 40% will automatically be taxed.

(8) Rent of paddy land is agricultural income and not taxable.

(9) Sale of scrap metal is a Capital item and therefore not taxable.

(10) & (11) Post Office rent and shop rent are fully taxable as they have nothing to do with tea business.

(12) Provident fund allowable as a deduction was not debited in the account; hence debited now.

*Illustration :*

From the following particulars, find out the Income-tax payable by A :—

- (a) Profits from an unregistered firm representing half share, Rs. 750.
- (b) Postal Cash Certificates to the value of Rs. 10,000 yielding interest of 6%.
- (c) 6% War Bonds (free of tax) of Rs. 20,000.
- (d) Shares in Allahabad Central Bank, Ltd., to the value of Rs. 5,000. The Bank declared a dividend of 15% (free of tax).
- (e) Shares in Cawnpore Sugar Mills, Ltd., to the value of Rs. 5,000. The Sugar Mill declared a dividend of 10% (less tax).
- (f) His Life Insurance premium amounts to Rs. 500 yearly.

| <i>Statement of Total Income of A.</i>                         | Gross.       | Tax deducted.     |
|--|--------------|-------------------|
| * (1) Profits from unregistered Firm ...                       | Rs. 750      | Rs. a. p.<br>Nil. |
| (2) Yield on Postal Cash Certificates ...                      |              |                   |
| (3) 6% War Bonds (Tax-free)                                    | 1,200        | Nil.              |
| (4) Allahabad Bank Dividend 15% (Free of Tax) on Rs. 5,000 ... | 867          | 117 0 0           |
| (5) Sugar Mill Div. 10% (L.T.) on Rs. 5,000 ...                | 500          | 67 11 0           |
|  | <u>3,317</u> | <u>184 11 0</u>   |

Total Income Rs. 3,317 (rate 6 pies).  
Less L.I.P. up to 1/6 Rs. 500

Rs. 2,817

Less Bonds (Tax-free) Rs. 1,200

Rs. 1,617 at 6 pies ... Rs. 50 9 0†

Already paid ... .. Rs. 184 11 0

Refundable to A ... .. Rs. 134 2 0

*Illustration:* OUDH BANK, LTD.

*Profit & Loss Account for the period ending . . . .*

|  | Rs.           |  | Rs.           |
|--|---------------|--|---------------|
| To Interest paid to depositors ...                       | 30,500        | By interest on overdraft ...                   | 2,900         |
| .. Postage ...   | 1,500         | .. Interest on loan ...                        | 35,500        |
| .. Advertisement ...                                     | 650           | .. Interest on G.P. Notes ...                  | 10,500        |
| .. Travelling ...  | 750           | .. Dividend on shares ...                      | 8,300         |
| .. Printing ...  | 450           | .. Profit on sale of G.P. Notes and shares ... | 3,300         |
| .. Motor expenses ...                                    | 1,200         | .. Discount ...                                | 2,000         |
| .. Miscellaneous ...                                     | 500           | .. Commission ...                              | 1,700         |
| .. Office expenses including rent, electricity, etc. ... | 8,550         | .. Collection charges ...                      | 1,600         |
| .. Loss on sale of Securities ...                        | 200           | .. Incidental charges ...                      | 620           |
| .. Insurance premium ...                                 | 300           | .. Admission fee ...                           | 80            |
| .. Net profit ...  | 21,900        |  |               |
|  | <u>66,500</u> |  | <u>66,500</u> |

\* As firm has not been taxed owing to the fact that the total Income was below Rs. 2,000 the amount Rs. 750 will be taxed here.

† Surcharge 1/12 on tax payable. This has been ignored in this calculation. Postal Cash Certificate yield will not be included in the Total Income.

To complete the assessment of the above Profit and Loss Account, details are necessary for interest on G.P. Notes Rs. 10,500.

The following explanations are obtained:—

On mercantile basis the accounts having been prepared, the actual amount of interest received during the year will be obtained as follows:—

|  |            |
|--|------------|
|  | Rs. 10,500 |
| Less interest accrued up to P. & L. date |            |
| but not receivable                       | Rs. 4,300  |
|  | Rs. 6,200  |
| Add interest accrued up to P. & L. date  |            |
| but not receivable last year             | Rs. 2,800  |
|  | Rs. 9,000  |

*Profit and Loss Adjustment Account.*

|   | Rs.             |               | Rs.            |
|---|-----------------|---------------|----------------|
| To Interest on G.P. Notes                 | 10,500          | By Net Profit | ... 21,900     |
| „ Dividend on shares                      | 8,300           |               |                |
| „ Adjusted Profit                         | ... 3,100       |               |                |
| „   | 21,900          |               | 21,900         |
| Business Profit as adjusted above         |                 |               | ... Rs. 3,100  |
| Add Interest on G.P. Notes as per details |                 |               |                |
| Rs. 9,000 (net)                           |                 |               | ... Rs. 10,104 |
| Add Dividend on shares                    | Rs. 8,300 (net) |               | ... Rs. 9,600  |
|   |                 |               | Rs. 23,110     |

The rate of tax is 26 pies.

As both the Interest on G.P. Notes and Dividends on shares have already been taxed at 26 pies, the only item remains to be taxed is Rs. 3,100 at the rate of 26 pies.

**Note:—**

(1) Interest on G.P. Notes Rs. 10,500 is written back and Rs. 9,000 as obtained from Assessee's own particulars grossed up into Rs. 10,410 will be included in the total income.

(2) Dividend on shares grossed up into Rs. 9,600.

(3) In a banking concern Loss on sale of securities will be allowed and the profit on sale of G.P. Notes will be taxed.



Some important points about Super-tax :

- (1) Super-tax is in addition to Income-tax.
- (2) The total income for Income-tax is the total income for Super-tax.
- (3) Free of Tax securities are not free from Super-tax (only free from Income-tax).
- \* (4) Marginal relief will not apply here.
- (5) Super-tax not to be deducted at source (except in cases provided in sections 18(3A) to (3D) and in section 58(H).
- (6) Question of refund does not arise,
- (7) Super-tax is charged to the profits of Joint-Stock Companies at 1 anna per rupee.
- (8) Super-tax is charged to Individuals (Joint-Stock Company dividends will be included in the total income and be taxed again).
- (9) Deductions of Life Insurance premiums and Provident Fund payments are not allowed for Super-tax purposes.
- (10) Exemption for individuals ... Rs. 30,000
- (11) Exemption for Companies ... Rs. 50,000
- (12) Exemption for Hindu Undivided Family ... Rs. 75,000
- (13) Super-tax not charged to Registered Firms as such.

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\* Where, owing to the fact that the total income of an assessee has reached or exceeded a certain limit, he is liable to pay super-tax or to pay super-tax at a higher rate, the amount payable by him on account of income-tax and super-tax shall, where necessary, be reduced so as not to exceed the aggregate of the following amounts, namely:—

- (a) the amount which would have been payable on account of income-tax and super-tax if his total income had been a sum less by one rupee than that limit, and
- (b) the amount by which his total income exceeds that sum.

**Government Trading Taxation Act III of 1926.**

- (1) It applies to States or Dominions within the British Empire.
  - (2) The profits of business carried on by Indian States or Dominions in British India are taxable.
  - (3) Such a business would be taxed as a Company.
  - (4) Similarly the Dominions are entitled to tax the profits of business carried on by the Government of India.
  - (5) This arrangement has removed the preferential treatment to the Government undertakings in the matter of taxation.
  - (6) Foreign state is not taxable.
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## APPENDIX A

### ACT NO. XI OF 1922

*An Act to consolidate and amend the law relating to Income-tax and Super-tax.*

[As modified up to the 15th November, 1937.]

WHEREAS it is expedient to consolidate and amend the law relating to Income-tax and Super-tax; it is hereby enacted as follows:—

#### Short title, extent and commencement.

1. (1) This Act may be called the Indian Income-tax Act, 1922.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas, and applies also, within the Indian States and the tribal areas, to British subjects who are in the service of the Crown or of a local authority established in the exercise of the powers of the Crown Representative or the Central Government in that behalf, and to all other servants of the Crown in the said States and areas.

(3) It shall come into force on the first day of April, 1922.

#### Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “ agricultural income ” means—

(a) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land-revenue in British India or subject to a local rate assessed and collected by officers of the Crown as such;

(b) any income derived from such land by—

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-clause (ii);

- (c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any operation mentioned in sub-clauses (ii) and (iii) of clause (b) is carried on :

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver of the rent-in-kind by reason of his connection with the land, requires as a dwelling-house, or as a store-house, or other out-building;

(2) " assessee " means a person by whom Income-tax is payable;

(3) " Assistant Commissioner " means a person appointed to be an Assistant Commissioner of Income-tax under section 5,

(4) " business " includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;

(4A) " the Central Board of Revenue " means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924;

(5) " Commissioner " means a person appointed to be a Commissioner of Income-tax under section 5;

(6) " company " means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession, and includes any foreign association carrying on business in British India whether incorporated or not, and whether its principal place of business is situate in British India or not, which the Central Board of Revenue may, by general, or special order, declare to be a company for the purposes of this Act;

(6A) ' firm,' ' partner ' and ' partnership ' have the same meanings respectively as in the Indian Contract Act, 1872;

(7) " Income-tax Officer " means a person appointed to be an Income-tax Officer under section 5;

(8) " Magistrate " means a Presidency Magistrate or a Magistrate of the first class, or a Magistrate of the second class specially empowered by the Central Government to try offences against this Act;

(9) " person " includes a Hindu undivided family;

(10) " prescribed " means prescribed by rules made under this Act;

(11) " previous year " means—

- (a) the twelve months ending on the 31st day of March next preceding the year for which the assessment

is to be made, or, if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have so been made up :

Provided that, if this option has once been exercised by the assessee, it shall not again be exercised so as to vary the meaning of the expression "previous year" as then applicable to such assessee except with the consent of the Income-tax Officer and upon such conditions as he may think fit; or

- (b) in the case of any person, business or company or class of person, business or company, such period as may be determined by the Central Board of Revenue or by such authority as the Board may authorise in this behalf;

(12) "principal officer," used with reference to a local authority or a company or any other public body or any association, means—

- (a) the secretary, treasurer, manager or agent of the authority, company, body or association, or  
 (b) any person connected with the authority, company, body or association upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof;

(13) "public servant" has the same meaning as in the Indian Penal Code;

(14) "registered firm" means a firm registered under the provisions of section 26A;

(15) "total income" means total amount of income, profits and gains from all sources to which this Act applies computed in the manner laid down in section 16; and

(16) "unregistered firm" means a firm which is not a registered firm.

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## CHAPTER I

### CHARGE OF INCOME-TAX

#### Charge of Income-tax.

3. Where any Act of the Central Legislature enacts that income-tax shall be charged for any year at any rate or rates applicable to the total income of an assessee, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of all income,

profits and gains of the previous year of every individual, Hindu undivided family, company, firm and other association of individuals.

#### Application of Act.

4. (1) Save as herein after provided, this Act shall apply to all income, profits or gains, as described or comprised in section 6, from whatever source derived, accruing, or arising, or received in British India, or deemed under the provisions of this Act to accrue, or arise, or to be received in British India.

(2) Income, profits and gains accruing or arising without British India to a person resident in British India shall, if they are received in or brought into British India, be deemed to have accrued or arisen in British India and to be income, profits and gains of the year in which they are so received or brought notwithstanding the fact that they did not so accrue or arise in that year:

Provided that nothing contained in this sub-section shall apply to any income, profits or gains so accruing or arising prior to the 1st day of April, 1933, unless they are income, profits or gains of a business and are received in or brought into British India within three years of the end of the year in which they accrued or arose:

Provided further that nothing in this sub-section shall apply to income from agriculture arising or accruing in a State in India from land for which any annual payment in money or in kind is made to the State.

*Explanation.*—Income, profits or gains accruing or arising without British India shall not be deemed to be received or brought into British India within the meaning of this sub-section by reason only of the fact that they are taken into account in the balance sheet prepared in British India.

(3) This Act shall not apply to the following classes of income:—

- (i) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application, thereto.
- (ii) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes.
- (iii) The income of local authorities.
- (iv) Interest on securities which are held by, or are the property of, any Provident Fund to which the Provident Funds Act, 1897, applies.
- (v) Any capital sum received in commutation of the whole or a portion of a pension, or in the nature of consolidated compensation for death or injuries,

or in payment of any insurance policy, or as the accumulated balance at the credit of a subscriber to any such Provident Fund.

- (vi) Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit.
- (vii) Any receipts not being receipts arising from business or the exercise of a profession, vocation or occupation, which are of a casual and non-recurring nature, or are not by way of addition to the remuneration of an employé.
- (viii) Agricultural income.
- (ix) Any income received by trustees on behalf of a recognised provident fund as defined in clause (a) of section 58A.

In this sub-section "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility.

## CHAPTER II

### INCOME-TAX AUTHORITIES

#### Income-tax authorities.

5. (1) There shall be the following classes of Income-tax authorities for the purposes of this Act, namely:—

- (a) The Central Board of Revenue,
- (b) Commissioners of Income-tax,
- (c) Assistant Commissioners of Income-tax, and
- (d) Income-tax Officers.

(3) The Central Government may appoint a Commissioner of Income-tax for any area specified in the order of appointment.

(4) The Central Government may appoint, for any area as many Assistant Commissioners of Income-tax and Income-tax Officers as it thinks fit. They shall perform their functions in respect of such persons or classes of persons and of such incomes or classes of income and in respect of such areas as the Commissioner of Income-tax may direct and, where two or more Assistant Commissioners of Income-tax or Income-tax Officers have been appointed for the same area, in accordance with any orders which the Commissioner of Income-tax may make for the distribution and allocation of the work to be performed. The Commissioner may, by general or special order in writing, direct that the powers conferred on the Income-tax Officer and the

Assistant Commissioner by or under this Act shall, in respect of any specified case or class of cases, be exercised by the Assistant Commissioner and the Commissioner, respectively, and, for the purposes of any case in respect of which such order applies, references in this Act or in any rules made hereunder to the Income-tax Officer and the Assistant Commissioner shall be deemed to be references to the Assistant Commissioner and the Commissioner, respectively.

(5) The Central Board of Revenue may, by notification in the Official Gazette, appoint Commissioners of Income-tax, Assistant Commissioners of Income-tax and Income-tax Officers to perform such functions in respect of such classes of persons or such classes of income, and for such area, as may be specified in the notification, and thereupon the functions so specified shall cease, within the specified area, to be performed, in respect of the specified classes of persons or classes of income, by the authorities appointed under sub-sections (3) and (4).

(6) Assistant Commissioners of Income-tax and Income-tax Officers appointed under sub-section (4) shall, for the purposes of this Act, be subordinate to the Commissioner of Income-tax appointed under sub-section (3) for the area in which they perform their functions.

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## CHAPTER III

### TAXABLE INCOME

#### Heads of income chargeable to income-tax.

6. Save as otherwise provided by this Act, the following heads of income, profits and gains shall be chargeable to income-tax in the manner hereinafter appearing, namely:—

- (i) Salaries.
- (ii) Interest on securities.
- (iii) Property.
- (iv) Business.
- (v) Professional earnings.
- (vi) Other sources.

#### Salaries.

7. (1) The tax shall be payable by an assessee under the head "Salaries" in respect of any salary or wages, any annuity, pension or gratuity, and any fees, commissions, perquisites or profits received by him in lieu of, or in addition to, any salary or wages, which are paid by or on behalf of the Crown, a local authority, a company, or any other public body or association, or by or on behalf of any private employer;



Provided that the tax shall not be payable in respect of any sum deducted from the salary payable by or on behalf of the Crown to any individual, being a sum deducted in accordance with the conditions of his service for the purpose of securing to him a deferred annuity or of making provision for his wife or children, provided that the sum so deducted shall not exceed one-sixth of the salary.

*Explanation.*—The right of a person to occupy free of rent as a place of residence any premises provided by his employer is a perquisite for the purposes of this sub-section.

(2) Any income which would be chargeable under this head if paid in British India shall be deemed to be so chargeable if paid to a British subject or any servant of His Majesty in any part of India by or on behalf of the Crown or by a local authority established in the exercise of the powers of the Crown Representative or the Central Government in that behalf.

#### Interest on securities.

8. The tax shall be payable by an assessee under the head "Interest on securities" in respect of the interest receivable by him on any security of the Central Government or of a Provincial Government or on debentures or other securities for money issued by or on behalf of a local authority or a company:

Provided that no income-tax shall be payable under this section by the assessee in respect of any sum deducted from such interest by way of commission by a banker realizing such interest on behalf of the assessee:

Provided further that no income-tax shall be payable on the interest receivable on any security of the Central Government issued or declared to be income-tax free:

Provided further that the income-tax payable on the interest receivable on any security of a Provincial Government issued income-tax free shall be payable by that Provincial Government.

#### Property.

9. (1) The tax shall be payable by an assessee under the head "Property" in respect of the *bonâ fide* annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for the purposes of his business, subject to the following allowances, namely:—

- (i) where the property is in the occupation of the owner, or where it is let to a tenant and the owner has undertaken to bear the cost of repairs, a sum equal to one-sixth of such value;
- (ii) where the property is in the occupation of a tenant who has undertaken to bear the cost of repairs, the difference between such value and the rent paid by the tenant up to but not exceeding one-sixth of such value;

- (iii) the amount of any annual premium paid to insure the property against risk of damage or destruction;
- (iv) where the property is subject to a mortgage, or other capital charge, the amount of any interest on such mortgage or charge; where the property is subject to a ground rent, the amount of such ground rent; and where the property has been acquired with borrowed capital, the amount of any interest payable on such capital and not specifically charged upon the property itself;
- (v) any sums paid on account of land revenue in respect of the property;
- (vi) in respect of collection charges, a sum not exceeding the prescribed maximum;
- (vii) in respect of vacancies, such sum as the Income-tax Officer may determine having regard to the circumstances of the case:

Provided that the aggregate of the allowances made under this sub-section shall in no case exceed the annual value.

(2) For the purposes of this section, the expression "annual value" shall be deemed to mean the sum for which the property might reasonably be expected to let from year to year:

Provided that, where the property is in the occupation of the owner for the purposes of his own residence, such sum shall, for the purposes of this section, be deemed not to exceed ten per cent of the total income of the owner.

#### Business.

10. (1) The tax shall be payable by an assessee under the head "Business" in respect of the profit or gains of any business carried on by him.

(2) Such profits or gains shall be computed after making the following allowances, namely:—

- (i) any rent paid for the premises in which such business is carried on, provided that when any substantial part of the premises is used as a dwelling-house by the assessee, the allowance under this clause shall be such sum as the Income-tax Officer may determine having regard to the proportional part so used;
- (ii) in respect of repairs, where the assessee is the tenant only of the premises, and has undertaken to bear the cost of such repairs, the amount paid on account thereof, provided that, if any substantial part of the premises is used by the assessee as a dwelling-house, a proportional part only of such amount shall be allowed;
- (iii) in respect of capital borrowed for the purposes of the business, where the payment of interest thereon is

not in any way dependent on the earning of profits, the amount of the interest paid;

*Explanation.*—Recurring subscriptions paid periodically by shareholders or subscribers in such Mutual Benefit Societies as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause:

- (iv) in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, the amount of any premium paid;
- (v) in respect of current repairs to such buildings, machinery, plant, or furniture, the amount paid on account thereof;
- (vi) in respect of depreciation of such buildings, machinery, plant, or furniture being the property of the assessee, a sum equivalent to such percentage on the original cost thereof to the assessee as may in any case or class of cases be prescribed:

Provided that—

- (a) the prescribed particulars have been duly furnished;
- (b) where full effect cannot be given to any such allowance in any year owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that allowance, or if there is no such allowance for that year, be deemed to be the allowance for that year, and so on for succeeding years; and
- (c) the aggregate of all such allowances made under this Act or any Act repealed hereby, or under the Indian Income-tax Act, 1886, shall, in no case, exceed the original cost to the assessee of the buildings, machinery, plant, or furniture, as the case may be;
- (vi) in respect of any machinery or plant which, in consequence of its having become obsolete, has been sold or discarded, the difference between the original cost to the assessee of the machinery or plant as reduced by the aggregate of the allowances made in respect of depreciation under clause (vi), or any Act repealed hereby, or the Indian Income-tax Act, 1883, and the amount for which the machinery or plant is actually sold, or its scrap value;
- (viii) in respect of animals which have been used for the purposes of the business otherwise than as stock in

trade and have died or become permanently useless for such purposes, the difference between the original cost to the assessee of the animals and the amount, if any, realised in respect of the carcasses or animals;

- (viii) any sums paid on account of land-revenue, local rates or municipal taxes in respect of such part of the premises as is used for the purposes of the business;
- (viii a) any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission:

Provided that the amount of the bonus or commission is of a reasonable amount with reference to—

- (a) the pay of the employee and the conditions of his service;
- (b) the profits of the business for the year in question; and
- (c) the general practice in similar businesses;
- (ix) any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits or gains:

Provided that nothing in clause (viii) or clause (ix) shall be deemed to authorise the allowance of any sum paid on account of any cess, rate or tax levied on the profits or gains of any business or assessed at a proportion of or otherwise on the basis of any such profits or gains.

(3) In sub-section (2), the word "paid" means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this section.

#### Professional earnings.

11. (1) The tax shall be payable by an assessee under the head "Professional earnings" in respect of the profits or gains of any profession or vocation followed by him.

(2) Such profits or gains shall be computed after making the following allowances, namely:—

- (i) any expenditure (not being in the nature of capital expenditure) incurred solely for the purposes of such profession or vocation, and not being personal expenses of the assessee;
- (ii) in respect of depreciation of buildings and depreciation and obsolescence of machinery, apparatus, appliances, plant, furniture or other capital assets being the property of the assessee and used solely for the purposes of such profession or vocation, the allowances specified in clauses (vi) and (vii) of sub-section (2) of section 10 subject to all the conditions specified in those clauses.

(3) Professional fees paid in any part of India to a person ordinarily resident in British India shall be deemed to be profits or gains chargeable under this head.

#### Other sources.

12. (1) The tax shall be payable by an assessee under the head "Other sources" in respect of income, profits and gains of every kind and from every source to which this Act applies (if not included under any of the preceding heads).

(2) Such income, profits and gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains, provided that no allowance shall be made on account of any personal expenses of the assessee.

#### Method of accounting.

13. Income, profits and gains shall be computed, for the purposes of sections 10, 11 and 12, in accordance with the method of accounting regularly employed by the assessee:

Provided that, if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the Income-tax Officer, the income, profits and gains cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer may determine.

#### Exemptions of a general nature.

14. (1) The tax shall not be payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family.

(2) The tax shall not be payable by an assessee in respect of—

(a) any sum which he receives by way of dividend as a shareholder in a company where the profits or gains of the company have been assessed to income-tax; or

(b) such an amount of the profits or gains of any firm which have been assessed to income-tax as is proportionate to his share in the firm at the time of such assessment; or

(c) any sum which he receives as his share of the profits or gains of an association of individuals, other than a Hindu undivided family, company or firm, where such profits or gains have been assessed to income-tax.

#### Exemption in the case of life insurances.

15. (1) The tax shall not be payable by an assessee in respect of any sums paid by him to effect an insurance on his own life or on the life of his wife, or in respect of a contract for a deferred

annuity on his own life or on the life of his wife, or as a contribution to any Provident Fund to which the Provident Funds Act, 1897, applies.

(2) Where the assessee is a Hindu undivided family, there shall be exempted under sub-section (1) any sums paid to effect an insurance on the life of any male member of the family or of the wife of any such member.

(3) The aggregate of any sums exempted under this section shall not, together with any sums exempted under the proviso to sub-section (1) of section 7 and any sums exempted under sub-section (1) of section 58F, exceed one-sixth of the total income of the assessee.

#### Exemptions and exclusions determining the total income.

16. (1) In computing the total income of an assessee sums exempted under the proviso to sub-section (1) of section 7, the second and third provisos to section 8, sub-section (2) of section 14 and section 15, shall be included.

(2) For the purposes of sub-section (1), any sum mentioned in clause (a) of sub-section (2) of section 14 shall be increased by the amount of income-tax payable by the company in respect of the dividend received.

(3) In computing the total income of any individual for the purpose of assessment, there shall be included—

- (a) so much of the income of a wife or minor child of such individual as arises directly or indirectly—
  - (i) from the membership of the wife in a firm of which her husband is a partner;
  - (ii) from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner;
  - (iii) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart; or
  - (iv) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual; and
- (b) so much of the income of any association of individuals consisting of such individual and his wife as arises from assets transferred to the association by such individual.

#### Reduction of tax when margin above a certain limit is small.

17. Where owing to the fact that the total income of any assessee has reached or exceeded a certain limit, he is liable to pay income-tax or to pay income-tax at a higher rate, the amount of income-tax payable by him shall, where necessary, be reduced

so as not to exceed the aggregate of the following amounts, namely:—

- (a) the amount which would have been payable if his total income had been a sum less by one rupee than that limit, and
- (b) the amount by which his total income exceeds that sum.

## CHAPTER IV

### DEDUCTIONS AND ASSESSMENT

#### 18. Payment by deduction at source.

(2) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax, but not super-tax, on the amount payable at the rate applicable to the estimated income of the assessee under this head:

Provided that such person may, at the time of making any deduction, increase or reduce the amount to be deducted under this sub-section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct.

(2A) Notwithstanding anything hereinbefore contained for the purpose of making the deduction under sub-section (2), there shall be included in the amount payable any income chargeable under the head "Salaries" which is payable to the assessee out of India by or on behalf of the Crown, and the value in rupees of such income shall be calculated at the prescribed rate of exchange.

(3) The person responsible for paying any income chargeable under the head "Interest on securities" shall, unless otherwise prescribed in the case of any security of the Central Government, at the time of payment, deduct income-tax, but not super-tax, on the amount of the interest payable at the maximum rate.

Provided that where the Income-tax Officer gives a certificate in writing (which certificate he shall give in every proper case on the application of the assessee) that to the best of his belief the total income of a recipient will be less than the minimum liable to income-tax or will be liable to a rate of income-tax less than the maximum rate, the person responsible for paying any income herein referred to such recipient shall, until such certificate is cancelled by the Income-tax Officer, pay the income without deduction or deduct the tax at such less rate, as the case may be.

(3A) Where the Income-tax Officer has reason to believe that the total income of any person residing out of British India to whom any interest not being "Interest on securities" is payable, will in any year exceed the maximum amount which is not chargeable with super-tax under the law for the time being in force, he may, by order in writing, require the person

responsible for paying such interest to such person to deduct at the time of payment income-tax and super-tax at the rates determined by the Income-tax Officer to be applicable to the total income of such person in that year.

(3B) Where the person responsible for paying any interest not being "Interest on securities" to any person pays to that person in any year an amount of such interest exceeding in the aggregate the maximum amount which is not chargeable with super-tax under the law for the time being in force, the person responsible for paying such interest shall, if he has not reason to believe that the recipient is resident in British India, and no order under sub-section (3A) has been received in respect of such recipient, deduct at the time of payment income-tax on the total amount of such interest at the rate appropriate to such total, and super-tax on the amount by which such total exceeds the maximum amount not chargeable with super-tax at the rate applicable to such excess.

(3C) Where the Income-tax Officer has reason to believe that any person, who is a shareholder in a company, is resident out of British India and that the total income of such person will in any year exceed the maximum amount which is not chargeable to super-tax under the law for the time being in force, he may, by order in writing, require the principal officer of the company to deduct at the time of payment of any dividend from the company to the shareholder in that year super-tax at such rate as the Income-tax Officer may determine as being the rate applicable in respect of the income of the shareholder in that year.

(3D) If in any year the amount of any dividend or the aggregate amount of any dividends paid to any shareholder by a company (together with the amount of any income-tax payable by the company in respect thereof) exceeds the maximum amount of the total income of a person which is not chargeable to super-tax under the law for the time being in force, and the principal officer of the company has not reason to believe that the shareholder is resident in British India, and no order under sub-section (3D) has been received in respect of such shareholder by the principal officer from the Income-tax Officer, the principal officer shall at the time of payment deduct super-tax on the amount of such excess at the rate which would be applicable under the law for the time being in force if the amount of such dividend or dividends (together with the amount of such income-tax as aforesaid) constituted the whole total income of the shareholder.

(4) All sums deducted in accordance with the provisions of this section shall, for the purpose of computing the income of an assessee, be deemed to be income received.

(5) Any deduction made in accordance with the provisions of this section shall be treated as a payment of income-tax or super-tax on behalf of the person from whose income the deduction was made, or of the owner of the security, as the case may be, and credit shall be given to him therefor in the assessment, if any, made for the following year under this Act:



Provided that, if such person or such owner obtains, in accordance with the provisions of this Act, a refund of any portion of the tax so deducted, no credit shall be given for the amount of such refund.

Provided further that where such person or owner is a person whose income is included under the provisions of sub-section (3) of section 16 in the total income of another person that person shall be deemed to be the person or owner on whose behalf payment has been made and to whom credit shall be given in the assessment for the following year.

(6) All sums deducted in accordance with the provisions of this section shall be paid within the prescribed time by the person making the deduction to the credit of the Central Government or as the Central Board of Revenue directs.

(7) If any such person does not deduct and pay the tax as required by or under this section, he shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of the tax:

Provided that the Income-tax Officer shall not make a direction under sub-section (1) of section 46 for the recovery of any penalty from such person unless satisfied that such person has wilfully failed to deduct and pay the tax.

(8) The power to levy by deduction under this section shall be without prejudice to any other mode of recovery.

(9) Every person deducting income-tax or super-tax in accordance with the provisions of sub-section (3), (3A), (3B), (3C) or (3D) shall, at the time of payment of interest or dividends, furnish to the person to whom such payment is made a certificate to the effect that income-tax or super-tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted, and such other particulars as may be prescribed.

#### **Payment in other cases.**

19. In the case of income chargeable under any head other than "Salaries" or "Interest on securities," and in any case where income-tax has not been deducted in accordance with the provisions of section 18 the tax shall be payable by the assessee direct.

#### **Supply of information regarding dividends.**

19A. The principal officer of every company shall, on or before the 15th day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and of the addresses, as entered in the register of shareholders maintained by the company, of the shareholders to whom a dividend or aggregate dividends exceeding such amount as may be prescribed in this behalf has or have been distributed during the preceding year and of the amount so distributed to each such shareholder.

**Certificate by company to shareholders receiving dividends.**

20. The principal officer of every company shall, at the time of distribution of dividends, furnish to every person receiving a dividend a certificate to the effect that the company has paid or will pay income-tax on the profits which are being distributed, and specifying such other particulars as may be prescribed.

**Supply of information regarding interest.**

20A. The person responsible for paying any interest not being "Interest on securities" shall, on or before the fifteenth day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and addresses of all persons to whom during the previous financial year he has paid interest or aggregate interest exceeding such amount not being less than one thousand rupees as may be prescribed in this behalf, together with the amount paid to each such person.

**Annual return.**

21. The prescribed person in the case of every Government office, and the principal officer or the prescribed person in the case of every local authority, company or other public body or association, and every private employer shall prepare, and, within thirty days from the 31st day of March in each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form, a return in writing showing—

- (a) the name and, so far as it is known, the address, of every person who was receiving on the said 31st day of March, or has received during the year ending on that date, from the authority, company, body, association or private employer, as the case may be, any income chargeable under the head "Salaries" of such amount as may be prescribed;
- (b) the amount of the income so received by each such person, and the time or times at which the same was paid;
- (c) the amount deducted in respect of income-tax from the income of each such person.

**Return of income.**

22. (1) The principal officer of every company shall prepare, and, on or before the fifteenth day of June in each year, furnish to the Income-tax Officer a return, in the prescribed form and verified in the prescribed manner, of the total income of the company during the previous year:

Provided that the Income-tax Officer may, in his discretion, extend the date for the delivery of the return in the case of any company or class of companies.

(2) In the case of any person other than a company whose total income is, in the Income-tax Officer's opinion, of such an

amount as to render such person liable to income-tax, the Income-tax Officer shall serve a notice upon him requiring him to furnish, within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total income during the previous year.

(3) If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section (2), or having furnished a return under either of those sub-sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made, and any return so made shall be deemed to be a return made in due time under this section.

(4) The Income-tax Officer may serve on the principal officer of any company or on any person upon whom a notice has been served under sub-section (2) a notice requiring him on a date to be therein specified, to produce, or cause to be produced, such accounts or documents as the Income-tax Officer may require:

Provided that the Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

#### Assessment.

23. (1) If the Income-tax Officer is satisfied that a return made under section 22 is correct and complete, he shall assess the total income of the assessee, and shall determine the sum payable by him on the basis of such return.

(2) If the Income-tax Officer has reason to believe that a return made under section 22 is incorrect or incomplete, he shall serve on the person who made the return a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's office or to produce, or to cause to be there produced, any evidence on which such person may rely in support of the return.

(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, the Income-tax Officer, after hearing such evidence as such person may produce and such other evidence as the Income-tax Officer may require, on specified points, shall, by an order in writing, assess the total income of the assessee, and determine the sum payable by him on the basis of such assessment.

(4) If the principal officer of any company or any other person fails to make a return under sub-section (1) or sub-section (2) of section 22, as the case may be, or fails to comply with all the terms of a notice issued under sub-section (4) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of this section, the Income-tax Officer shall make the assessment to the best of his judgment and, in the case of a registered firm, may cancel its registration:

Provided that the registration of a firm shall not be cancelled until fourteen days have elapsed from the issue of a notice by the Income-tax Officer, to the firm intimating his intention to cancel its registration.

**23A.** (1) Where the Income-tax Officer is satisfied that any firm or other association of individuals carrying on any business, other than a Hindu undivided family or a company, is under the control of one member thereof, and that such firm or association has been formed or is being used for the purpose of evading or reducing the liability to tax of any member thereof, he may, with the previous approval of the Assistant Commissioner, pass an order that the sum payable as income-tax by the firm or association shall not be determined, and thereupon the share of each member in the profits and gains of the firm or association shall be included in his total income for the purpose of his assessment thereon.

*Explanation.*—A member of a firm or association who owns the whole or the major portion of the capital of the firm or association shall not by reason only of that fact be deemed to control the firm or association.

(2) Where the Income-tax Officer is satisfied that a company is under the control of not more than five of its members and that its profits and gains are allowed to accumulate beyond its reasonable needs, existing and contingent, having regard to the maintenance and development of its business, without being distributed to the members, or that a reasonable part of its profits and gains, having regard to the said needs, has not been distributed to its members in such manner as to render the amount distributed liable to be included in their total income, and that such accumulation or failure to distribute is for the purpose of preventing the imposition of tax upon any of the members in respect of their shares in the profits and gains so accumulated or not distributed, the Income-tax Officer may, with the previous approval of the Assistant Commissioner, pass an order that the sum payable as income-tax by the company shall not be determined, and thereupon the proportionate share of each member in the profits and gains of the company, whether such profits and gains have been distributed to the members or not, shall be included in the total income of such member for the purpose of his assessment thereon.

Provided that this sub-section shall not apply to any company which is a subsidiary company or in which the public are substantially interested.

*Explanation.*—For the purpose of this sub-section,—

- (a) a company shall be deemed to be a subsidiary company if, by reason of the beneficial ownership of shares therein, the control of the company is in the hands of a company, not being a company to which the provisions of this sub-section apply, or of two or more companies none of which is a company to which those provisions apply;
- (b) a company shall be deemed to be a company in which

the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per cent. of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the previous year beneficially held by, the public (not including a company to which the provisions of this sub-section apply), and if any such shares have in the course of such previous year been the subject of dealings in any stock exchange in British India or are in fact freely transferable by the holders to other members of the public;

- (c) unless the contrary is proved, a company shall be deemed to be under the control of any persons where the majority of the voting power or shares is in the hands of those persons or of relatives or nominees of those persons;
- (d) "nominee" means a person who may be required to exercise his voting power on the directions of, or holds shares directly or indirectly on behalf of, another person.

(3) The Assistant Commissioner shall not give his approval to any order proposed to be passed by the Income-tax Officer under this section until he has given the firm, association or company concerned an opportunity of being heard.

(4) (i) Where any member of a firm or association of individuals makes default in the payment of tax on his share of profits and gains which has been included in his total income under the provisions of sub-section (1) such tax may be recovered from the firm or association, as the case may be.

(ii) Where the proportionate share of any member of a company in the undistributed profits and gains of the company has been included in his total income under the provisions of sub-section (2), the tax payable in respect thereof shall be recoverable from the company and may be recovered from such member, if there are not sufficient funds in the hands of the company to pay the tax, or if the winding up of the company has commenced.

(iii) Where tax is recoverable from a company, firm or other association under this sub-section, a notice of demand shall be served upon it in the prescribed form showing the sum so payable, and such company, firm or association shall be deemed to be the assessee in respect of such sum, for the purposes of Chapter VI.

(5) Where tax has been paid in respect of any undistributed profits and gains of a company under this section, and such profits and gains are subsequently distributed in any year, the proportionate share therein of any member of the company shall be excluded in computing his total income of that year.

**Set-off of loss in computing aggregate income.**

24. (1) Where any assessee sustains a loss of profits or gains in any year under any of the heads mentioned in section 6, he shall be entitled to have the amount of the loss off against his income, profits or gains under any other head in that year.

(2) Where the assessee is a registered firm, and the loss sustained cannot wholly be set off under sub-section (1), any member of such firm or any person who being a minor has been admitted to the benefits of partnership in such firm shall be entitled to have set off against any income, profits or gains of the year in which the loss was sustained in respect of which the tax is payable by him such amount of the loss not already set off as is proportionate to his share in the firm or to his share of the benefits of partnership, as the case may be.

**Assessment in case of departure from British India.**

24A. (1) When it appears to the Income-tax Officer that any person may leave British India during the current financial year, or shortly after its expiry, and that he has no present intention of returning, the Income-tax Officer may proceed to assess him on his total income for the period from the expiry of the last previous year for which he has been assessed to the probable date of his departure from British India. For each completed previous year included in this period an assessment shall be made on the total income of such person at the rate at which it would have been charged had such income been fully assessed, and for the period from the expiry of the last of such previous years to the probable date of departure, the Income-tax Officer shall estimate the total income of such person and assess it at the rate in force for the financial year in which such assessment is made:

Provided that nothing herein contained shall authorise an Income-tax Officer to assess any income, profits or gains which have escaped assessment or have been assessed at too low a rate in respect of which he is debarred from issuing a notice under section 34.

(2) For the purpose of making an assessment under sub-section (1) the Income-tax Officer may serve a notice upon such person requiring him to furnish, within such time not being less than seven days as may be specified in the notice, a return in the same form and verified in the same manner as a return under sub-section (2) of section 22, setting forth (along with such other particulars as may be provided for in the notice) his total income for each of the completed previous years comprised in the period first referred to in sub-section (1) and his estimated total income for the period from the expiry of the last such completed previous year to the probable date of his departure; and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under sub-section (2) of section 22,

**Tax of deceased person payable by representative.**

24B. (1) Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge the tax assessed as payable by such person, or any tax which would have been payable by him under this Act if he had not died.

(2) Where a person dies before he is served with a notice under sub-section (2) of section 22 or section 34, as the case may be, the Income-tax Officer may serve on his executor, administrator or other legal representative a notice under sub-section (2) of section 22 or under section 34, as the case may be, and may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee.

(3) Where a person dies, without having furnished a return which he has been required to furnish under the provisions of sub-section (2) of section 22 or having furnished a return which the Income-tax Officer has reason to believe to be incorrect or incomplete, the Income-tax Officer may make an assessment of the total income of such person and determine the tax payable by him on the basis of such assessment, and for this purpose may require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions of sections 22 and 23 have required from the deceased person.

**Assessment in case of discontinued business.**

25. (1) Where any business, profession or vocation on which income-tax was not at any time charged under the provisions of the Indian Income-tax Act, 1918, is discontinued in any year, an assessment may be made in that year on basis of the income, profits or gains of the period between the end of the previous year and the date of such discontinuance in addition to the assessment, if any, made on the basis of the income, profits or gains of the previous year.

(2) Any person discontinuing any such business, profession or vocation shall give to the Income-tax Officer notice of such discontinuance within fifteen days thereof, and, where any person fails to give the notice required by this sub-section, the Income-tax Officer may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of tax subsequently assessed on him in respect of any income, profits or gains of the business, profession or vocation up to the date of its discontinuance.

(3) Where any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is discontinued, no tax shall be payable in respect of the income, profits and gains of the period between the end of the previous year and the date of such discontinuance, and

the assessee may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference.

(4) Where an assessment is to be made under sub-section (1) or sub-section (3), the Income-tax Officer may serve on the person whose income, profits and gains are to be assessed, or, in the case of a firm, on any person who was a member of such firm at the time of its discontinuance, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section.

#### **Assessment after partition of a Hindu undivided family.**

25A. (1) Where, at the time of making an assessment under section 23, it is claimed by or on behalf of any member of a Hindu family hitherto assessed as undivided that a partition has taken place among the members of such family, the Income-tax Officer shall make such inquiry thereinto as he may think fit, and, if he is satisfied that a separation of the members of the family has taken place and that the joint family property has been partitioned among the various members or groups of members in definite portions he shall record an order to that effect:

Provided that no such order shall be recorded until notices of the inquiry have been served on all the members of the family.

(2) Where such an order has been passed, the Income-tax Officer shall make an assessment of the total income received by or on behalf of the joint family as such, as if no separation or partition had taken place, and each member or group of members shall, in addition to any income-tax for which he or it may be separately liable and notwithstanding anything contained in sub-section (1) of section 14, be liable for a share of the tax on the income so assessed according to the portion of the joint family property allotted to him or it;

and the Income-tax Officer shall make assessments accordingly on the various members and groups of members in accordance with the provisions of section 23:

Provided that all the separated members and groups of members shall be liable jointly and severally for the tax assessed on the total income received by or on behalf of the joint family as such.

(3) Where such an order has not been passed in respect of a Hindu family hitherto assessed as undivided, such family shall be deemed, for the purposes of this Act, to continue to be a Hindu undivided family.



**Change in constitution of a firm.**

26. (1) Where, at the time of making an assessment under section 23, it is found that a change has occurred in the constitution of a firm or that a firm has been newly constituted, the assessments on the firm and on the members thereof shall, subject to the provisions of this Act, be made as if the firm had been constituted throughout the previous year as it is constituted at the time of making the assessment, and as if each member had received a share of the profits of that year proportionate to his interest in the firm at the time of making the assessment.

(2) Where, at the time of making an assessment under section 23, it is found that the person carrying on any business, profession or vocation has been succeeded in such capacity by another person, the assessment shall be made on such person succeeding, as if he had been carrying on the business, profession or vocation throughout the previous year, and as if he had received the whole of the profits for that year.

**Procedure in registration of firms.**

26A. (1) Application may be made to the Income-tax Officer on behalf of any firm, constituted under an instrument of partnership specifying the individual shares of the partners, for registration for the purposes of this Act and of any other enactment for the time being in force relating to income-tax or super-tax.

(2) The application shall be made by such person or persons, and at such times and shall contain such particulars and shall be in such form, and be verified in such manner, as may be prescribed; and it shall be dealt with by the Income-tax Officer in such manner as may be prescribed.

**Cancellation of assessment when cause is shown.**

27. Where an assessee or, in the case of a company, the principal officer thereof, within one month from the service of a notice of demand issued as hereinafter provided, satisfies the Income-tax Officer that he was prevented by sufficient cause from making the return required by section 22, or that he did not receive the notice issued under sub-section (4) of section 22, or sub-section (2) of section 23, or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of the last-mentioned notices, the Income-tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 23.

**Penalty for concealment of income or improper distribution of profits.**

28. (1) If the Income-tax Officer, the Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that an assessee has concealed the particulars of his income or has deliberately furnished inaccurate particulars of such income, and has thereby returned it below its real amount,

he may direct that the assessee shall, in addition to the income-tax payable by him, pay by way of penalty a sum not exceeding the amount of the income-tax which would have been avoided if the income so returned by the assessee had been accepted as the correct income.

(2) If the Income-tax Officer, the Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership registered under this Act governing such distribution, and that any partner has thereby returned his income below its real amount, he may direct that such partner shall, in addition to the income-tax payable by him, pay by way of penalty a sum not exceeding the amount of income-tax which has been avoided, or would have been avoided if the income returned by such partner had been accepted as his correct income; and no refund or other adjustment shall be claimable by any other partner by reason of such direction.

(3) No order shall be made under sub-section (1) or sub-section (2) unless the assessee or partner, as the case may be, has been heard, or has been given a reasonable opportunity of being heard.

(4) No prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

(5) An Assistant Commissioner or a Commissioner, who has made an order under sub-section (1) or sub-section (2), shall forthwith send a copy of the same to the Income-tax Officer.

#### Notice of demand.

29. When the Income-tax Officer has determined a sum to be payable by an assessee under section 23, or when an order has been passed under sub-section (2) of section 25 or section 28 for the payment of a penalty, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum so payable.

#### Appeal against assessment under this Act.

30. (1) Any assessee objecting to the amount or rate at which he is assessed under section 23 or section 27, or denying his liability to be assessed under this Act, or objecting to a refusal of an Income-tax Officer to register a firm under section 26A or to make a fresh assessment under section 27, or to any order against him under sub-section (2) of section 25, or section 25A or section 28, made by an Income-tax Officer, may appeal to the Assistant Commissioner against the assessment or against such refusal or order:

Provided that no appeal shall lie in respect of an assessment made under sub-section (4) of section 23, or under that sub-section read with section 27.

(2) The appeal shall ordinarily be presented within thirty days of receipt of the notice of demand relating to the assessment or penalty objected to or of the intimation of the refusal to pass an order under sub-section (1) of section 25A, or to register a firm under section 26A or of the date of the refusal to make a fresh assessment under section 27, as the case may be; but the Assistant Commissioner may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(3) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

#### Hearing of appeal.

31. (1) The Assistant Commissioner shall fix a day and place for the hearing of the appeal, and may from time to time adjourn the hearing.

(2) The Assistant Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit, or cause further inquiry to be made by the Income-tax Officer.

(3) In disposing of an appeal the Assistant Commissioner may, in the case of an order of assessment,—

(a) confirm, reduce, enhance or annul the assessment, or

(b) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer thinks fit or the Assistant Commissioner may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment,

or, in the case of an order refusing to register a firm under section 26A or to make a fresh assessment under section 27,

(c) confirm such order, or cancel it and direct the Income-tax Officer to register the firm or to make a fresh assessment, as the case may be,

or, in the case of an order under sub-section (2) of section 25 or section 28,

(d) confirm, cancel or vary such order:

Provided that the Assistant Commissioner shall not enhance an assessment unless the appellant has had a reasonable opportunity of showing cause against such enhancement.

#### Appeals against orders of Assistant Commissioner.

32. (1) Any assessee objecting to an order passed by an Assistant Commissioner under section 28 or to an order enhancing his assessment under sub-section (3) of section 31, may appeal to the Commissioner within thirty days of the date on which he was served with notice of such order.

(2) The appeal shall be in the prescribed form, and shall be verified in the prescribed manner.

(3) In disposing of the appeal the Commissioner may, after giving the appellant an opportunity of being heard, pass such orders thereon as he thinks fit.

#### **Power of revision.**

33. (1) The Commissioner may of his own motion call for the record of any proceeding under this Act which has been taken by any authority subordinate to him or by himself when exercising the powers of an Assistant Commissioner under sub-section (4) of section 5.

(2) On receipt of the record the Commissioner may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such orders thereon as he thinks fit:

Provided that he shall not pass any order prejudicial to an assessee without hearing him or giving him a reasonable opportunity of being heard.

#### **Reference to Board of Referees.**

33A. (1) Any person aggrieved by an order of an Income-tax Officer under sub-section (1) or sub-section (2) of section 23A may, within thirty days of the date on which he was served with notice of such order, lodge an appeal in the office of the Commissioner.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) The Commissioner shall refer such appeal, with a statement of his own opinion thereon, to a Board of Referees for decision; and the Board of Referees shall decide the appeal after hearing the appellant and any person deputed by the Commissioner:

Provided that, before making a reference to a Board of Referees, the Commissioner may, and at the request of the appellant shall, in exercise of his powers of revision under section 33, decide the matters in dispute and thereupon the assessee may withdraw his appeal or proceed with it.

(4) The decision of the Board of Referees shall be forwarded to the Commissioner who shall transmit it to the Income-tax Officer who passed the original order, and shall also send copies to each Income-tax Officer who has made any assessment consequent upon such order; and where a decision reverses or modifies the order of the Income-tax Officer, fresh assessments shall be made in accordance therewith, or such consequential adjustments as may be required shall be made in any assessment already made.

(5) The decision of a Board of Referees shall not be subject to appeal to any Income-tax authority, and shall not be revised by the Commissioner in exercise of his powers under section 33.

(6) A Board of Referees shall consist of not less than three and not more than five persons, of whom not less than one-half

shall be non-officials having business experience, and one shall be a judicial officer not inferior in rank to a Subordinate Judge or a Judge of a Small Cause Court who has held judicial office for a period of not less than ten years.

(7) Subject to the provisions of sub-section (6), the Central Board of Revenue may make rules regulating the formation, composition and procedure of Boards of Referees.

**Income escaping assessment.**

34. If for any reason income, profits or gains chargeable to income-tax has escaped assessment in any year, or has been assessed at too low a rate, the Income-tax Officer may, at any time within one year of the end of that year, serve on the person liable to pay on such income, profits or gains, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and may proceed to assess or re-assess such income, profits or gains, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section :

Provided that the tax shall be charged at the rate at which it would have been charged had the income, profits or gains not escaped assessment or full assessment, as the case may be.

**Rectification of mistake.**

35. (1) The Commissioner or Assistant Commissioner may, at any time within one year from the date of any order passed by him in appeal or, in the case of the Commissioner, in revision under section 33 and the Income-tax Officer may, at any time within one year from the date of any demand made upon an assessee, on his own motion rectify any mistake apparent from the record of the appeal, revision or assessment, as the case may be and shall within the like period rectify any such mistake which has been brought to his notice by the assessee :

Provided that no such rectification shall be made, having the effect of enhancing an assessment unless the Commissioner, the Assistant Commissioner or the Income-tax Officer, as the case may be, has given notice to the assessee of his intention so to do and has allowed him a reasonable opportunity of being heard.

(2) Where any such rectification has the effect of reducing the assessment, the Income-tax Officer shall make any refund which may be due to such assessee.

(3) Where any such rectification has the effect of enhancing the assessment, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 29, and the provisions of this Act shall apply accordingly.

**Tax to be calculated to nearest anna.**

36. In the determination of the amount of tax or of a refund payable under this Act, fractions of an anna less than six

pies shall be disregarded, and fractions of an anna equal to or exceeding six pies shall be regarded as one anna.

**Power to take evidence on oath, etc.**

37. The Income-tax Officer, Assistant Commissioner and Commissioner shall, for the purposes of this Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:—

- (a) enforcing the attendance of any person and examining him on oath or affirmation;
- (b) compelling the production of documents; and
- (c) issuing commissions for the examination of witnesses, and any proceeding before an Income-tax Officer, Assistant Commissioner or Commissioner under this Chapter shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code.

**Power to call for information.**

38. The Income-tax Officer or Assistant Commissioner may, for the purposes of this Act,—

- (1) require any firm, or Hindu undivided family to furnish him with a return of the members of the firm, or of the manager or adult male members of the family, as the case may be, and of their addresses;
- (2) require any person whom he has reason to believe to be a trustee, guardian, or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian, or agent, and of their addresses;
- (3) require any person whom he has reason to believe to be engaged in business, to furnish him with a return containing particulars of the location and style of his principal place of business, and of his branch businesses, if any, the names and addresses of his partners in any business, and the extent of his own share and the shares of all such partners in the profits of such business or businesses.

**Power to inspect the register of members of any company.**

39. The Income-tax Officer or Assistant Commissioner, or any person authorised in writing in this behalf by the Income-tax Officer or Assistant Commissioner, may inspect and, if necessary, take copies, or cause copies to be taken, of any register of the members, debenture-holders or mortgagees of any company or of any entry in such register.

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## CHAPTER V.

## LIABILITY IN SPECIAL CASES.

**Guardians, trustees and agents.**

40. In the case of any guardian, trustee or agent of any person being a minor, lunatic or idiot or residing out of British India (all of which persons are hereinafter in this section included in the term beneficiary) being in receipt on behalf of such beneficiary of any income, profits or gains chargeable under this Act, the tax shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same amount as it would be leviable upon and recoverable from any such beneficiary if of full age, sound mind, or resident in British India, and in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordingly.

**Courts of Wards, etc.**

41. In the case of income, profits or gains chargeable under this Act which are received by the Courts of Wards, the Administrators-General, the Official Trustees or by any receiver or manager (including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a Court, the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, receiver or manager in the like manner and to the same amount as it would be leviable upon and recoverable from any person on whose behalf such income, profits or gains are received, and all the provisions of this Act shall apply accordingly.

**Non-residents.**

42. (1) In the case of any person residing out of British India, all profits or gains accruing or arising, to such person, whether directly or indirectly, through or from any business connection or property in British India, shall be deemed to be income accruing or arising within British India, and shall be chargeable to income-tax in the name of the agent of any such person, and such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax :

Provided that any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident person which are, or may at any time come within British India.

(2) Where a person not resident in British India, and not being a British subject or a firm or company constituted within His Majesty's dominions or a branch thereof, carries on business with a person resident in British India, and it appears to the Income-tax Officer or the Assistant Commissioner, as the case may be, that owing to the close connection between the resident and

the non-resident person and to the substantial control exercised by the non-resident over the resident, the course of business between those persons is so arranged, that the business done by the resident in pursuance of his connection with the non-resident produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the profits derived therefrom, or which may reasonably be deemed to have been derived therefrom, shall be chargeable to income-tax in the name of the resident person who shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax.

(3) Where any profits or gains have accrued or arisen to any person directly or indirectly from the sale in British India by him or by any agency or branch on his behalf of any merchandise exported to British India by him or any agency or branch on his behalf from any place outside British India, the profits or gains shall be deemed to have accrued and arisen and to have been received in British India, and no allowance shall be made under sub-section (2) of section 10 in respect of any buying or other commission whatsoever not actually paid, or of any other amounts not actually spent, for the purpose of earning such profits or gains.

**Agent to include persons treated as such.**

43. Any person employed by or on behalf of a person residing out of British India, or having any business connection with such person, or through whom such person is in the receipt of any income, profits or gains upon whom the Income-tax Officer has caused a notice to be served of his intention of treating him as the agent of the non-resident person shall, for all the purposes of this Act, be deemed to be such agent:

Provided that no person shall be deemed to be the agent of a non-resident person, unless he has had an opportunity of being heard by the Income-tax Officer as to his liability.

**Liability in case of a discontinued firm or partnership.**

44. Where any business, profession or vocation carried on by a firm has been discontinued, every person who was at the time of such discontinuance a member of such firm shall be jointly and severally liable for the amount of the tax payable in respect of the income, profits and gains of the firm.

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## CHAPTER VA

## SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SHIPPING.

**Liability to tax of occasional shipping.**

**44A.** The provisions of this Chapter shall, notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any person who resides out of British India and carries on business in British India in any year as the owner or charterer of a ship (such person hereinafter in this Chapter being referred to as the principal), unless the Income-tax Officer is satisfied that there is an agent of such principal from whom the tax will be recoverable in the following year under the other provisions of this Act.

**Return of profits and gains.**

**44B.** (1) Before the departure from any port in British India of any ship in respect of which the provisions of this Chapter apply, the master of the ship shall prepare and furnish to the Income-tax Officer a return of the full amount paid or payable to the principal, or to any person on his behalf, on account of the carriage of all passengers, live-stock or goods shipped at that port since the last arrival of the ship thereat.

(2) On receipt of the return, the Income-tax Officer shall assess the amount referred to in sub-section (1), and for this purpose may call for such accounts or documents as he may require, and one-twentieth of the amount so assessed shall be deemed to be the amount of the profits and gains accruing to the principal on account of the carriage of the passengers, live-stock and goods shipped at the port.

(3) When the profits and gains have been assessed as aforesaid, the Income-tax Officer shall determine the sum payable as tax thereon at the rate for the time being applicable to the total income of a company, and such sum shall be payable by the master of the ship, and a port-clearance shall not be granted to the ship until the Customs-collector, or other officer duly authorised to grant the same, is satisfied that the tax has been duly paid.

**Adjustment.**

**44C.** Nothing in this Chapter shall be deemed to prevent a principal from claiming, in any year following that in which any payment has been made on his behalf under this Chapter, that an assessment be made of his total income in the previous year, and that the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, and, if he so claims, any such payment as aforesaid shall be treated as a payment in advance of the tax and the difference between the sum so paid, and the amount of tax found payable by him shall be paid by him or refunded to him, as the case may be.

## CHAPTER VI

## RECOVERY OF TAX AND PENALTIES

**Tax when payable.**

45. Any amount specified as payable in a notice of demand under sub-section (4) of section 23A or under section 29 or an order under section 31 or section 32 or section 33, shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a time is not so mentioned, then on or before the first day of the second month following the date of the service of the notice or order, and any assessee failing so to pay shall be deemed to be in default, provided that, when an assessee has presented an appeal under section 30 or under section 33A, the Income-tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of.

**Mode and time of recovery.**

46. (1) When an assessee is in default in making a payment of income-tax, the Income-tax Officer may in his discretion direct that, in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty.

(1A) For the purposes of sub-section (1), the Income-tax Officer may direct the recovery of any sum less than the amount of the arrears and may enhance the sum so directed to be recovered from time to time in the case of a continuing default, so however that the total sum so directed to be recovered shall not exceed the amount of the arrears payable.

(2) The Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue:

Provided that without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have in respect of the attachment and sale of debts due to the assessee the powers which under the Code of Civil Procedure, 1908, a Civil Court has in respect of the attachment and sale of debts due to a judgment-debtor for the purpose of the recovery of an amount due under a decree.

(3) In any area with respect to which the Commissioner has directed that any arrears may be recovered by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the province, the Income-tax Officer may proceed to recover the amount due by such process.

(4) The Commissioner may direct by what authority any powers or duties incident under any such enactment as aforesaid

to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub-section (3).

(5) If any assessee is in receipt of any income chargeable under the head "Salaries" the Income-tax Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears due from such assessee, and such person shall comply with any such requisition, and shall pay the sum so deducted to the credit of the Central Government, or as the Central Board of Revenue directs.

(6) If the recovery of income-tax in any area has been entrusted to a Provincial Government under section 124 (1) of the Government of India Act, 1935, the Provincial Government may direct with respect to that area or any part thereof, that income-tax shall be recovered therein with, and as an addition to, any municipal tax or local rate, by the same person and in the same manner as the municipal tax or local rate is recovered.

(7) Save in accordance with the provisions of sub-section (1) of section 42, no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the year in which any demand is made under this Act.

#### Recovery of penalties.

47. Any sum imposed by way of penalty under the provisions of sub-section (2) of section 25, section 28 or sub-section (1) of section 46, shall be recoverable in the manner provided in this Chapter for the recovery of arrear of tax.

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## CHAPTER VII

### REFUNDS

#### Refunds.

48. (1) If a shareholder in a company who has received any dividend therefrom satisfies the Income-tax Officer or other authority appointed by the Central Government in this behalf that the rate of income-tax applicable to the profits or gains of the company at the time of the declaration of such dividend is greater than the rate applicable to his total income of the year in which such dividend was declared, or that his total income in such year is below the minimum chargeable with income-tax, he shall, on production of the certificate received by him under the provisions of section 20, be entitled to a refund on the amount of such dividend (including the amount of the tax thereon) calculated at the difference between those rates or at the rate applicable to the profits and gains of the company at the time of the declaration of such dividend, as the case may be.

(2) If a member of a registered firm or any person who being a minor has been admitted to the benefits of partnership in such firm, satisfies the Income-tax Officer or other authority appointed by the Central Government in this behalf that the rate of income-tax applicable to his total income of the previous year was less than the rate at which income-tax has been levied on the profits or gains of the firm of that year, or that his total income of the previous year was below the minimum chargeable with income-tax, he shall be entitled to a refund on his share of those profits or gains calculated at the difference between those rates or at the rate at which income-tax has been levied, as the case may be.

(3) If the owner of a security from the interest on which, or any person from whose salary, income-tax has been deducted in accordance with the provisions of section 18, satisfies the Income-tax Officer or other authority appointed by the Central Government in this behalf that the rate of income-tax applicable to his total income of the previous year was less than the rate at which income-tax has been charged in making such deduction in that year, or that his total income of the previous year was below the minimum chargeable with income-tax, he shall be entitled to a refund on the amount of interest or salary from which such deduction has been made calculated at the difference between those rates or at the rate at which income-tax has been deducted, as the case may be.

(3A) Where the shareholder referred to in sub-section (1), or the member of a registered firm or the minor admitted to the benefits of partnership referred to in sub-section (2) or the owner of a security referred to in sub-section (3) is a person whose income is included under the provisions of sub-section (3) of section 16 in the total income of another person, the provisions of sub-sections (1), (2) and (3) shall apply as if that person were himself the person entitled to a refund under those sub-sections.

(4) For the purposes of this section, "total income" includes, in the case of any person not resident in British India, all income, profits and gains wherever arising, accruing or received, which, if arising, accruing or received in British India, would be included in the computation of total income under section 16.

(5) Nothing in this section shall entitle to any refund any person not resident in British India who is neither a British subject as defined in section 27 of the British Nationality and Status of Aliens Act, 1914, nor a subject of a State in India.

#### **General power to make refunds.**

48A. (1) If any case not provided for by section 48 or by the provisions relating to refunds elsewhere contained in this Act the Income-tax Officer is satisfied, upon claim made in this behalf, that tax has been paid by or on behalf of any person with which he was not properly chargeable or which was in excess of the amount with which he was properly chargeable, the Income-tax Officer shall allow a refund to such person of the amount so paid or so paid in excess.

(2) The Assistant Commissioner in the exercise of his appellate powers, or the Commissioner in the exercise of his appellate powers or powers of revision if satisfied to the like effect shall in like manner cause a refund to be made by the Income-tax Officer of any amount found to have been wrongly paid or paid in excess.

(3) Nothing in this section shall operate to validate any objection or appeal which is otherwise invalid or to authorise the revision of any assessment or other matter which has become final and conclusive, or the review by any officer of a decision of his own which is subject to appeal or revision, or where any relief is specifically provided elsewhere in this Act, to entitle any person to any relief other or greater than that relief.

#### **Relief in respect of United Kingdom Income-tax.**

49. (1) If any person who has paid Indian income-tax for any year on any part of his income proves to the satisfaction of the Income-tax Officer that he has paid United Kingdom income-tax for that year in respect of the same part of his income and that the rate at which he was entitled to, and has obtained, relief under the provisions of section 27 of the Finance Act, 1920, is less than the Indian rate of tax charged in respect of that part of his income, he shall be entitled to a refund of a sum calculated on that part of his income at a rate equal to the difference between the Indian rate of tax or the appropriate rate of United Kingdom income-tax, whichever is less, and the rate at which he was entitled to, and obtained relief under that section.

(2) In sub-section (1)—

- (a) the expression "Indian income-tax" means income-tax and super-tax charged in accordance with the provisions of this Act;
- (b) the expression "Indian rate of tax" means the amount of the Indian income-tax divided by the income on which it was charged;
- (c) the expression "United Kingdom income-tax" means income-tax and super-tax chargeable in accordance with the provisions of the Income-tax Acts.
- (d) the expression "appropriate rate of United Kingdom income-tax" has the meaning assigned to that expression in section 27 of the Finance Act, 1920, as amended by the Finance Act, 1927.

#### **Power to set off amount of refunds against tax remaining payable.**

49A. Where under any of the provisions of this Act, a refund is found to be due to any person, the Income-tax Officer, Assistant Commissioner or Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded, or any part of that amount against the tax, if any, remaining payable by the person to whom the refund is due.

**Power of representative of deceased person or person disabled to make claim on his behalf.**

**49B.** Where through death, incapacity, bankruptcy, liquidation or other cause, a person who would but for such cause have been entitled to a refund under any of the provisions of this Act, or to make a claim under section 48 or 48A or 49, is unable to receive such refund or to make such claim, his executor, administrator or other legal representative, or the trustee or receiver, as the case may be, shall be entitled to receive such refund or to make such claim for the benefit of such person or his estate.

**Limitation of claims for refund.**

**50.** No claim to any refund of income-tax under this Chapter shall be allowed, unless it is made within one year from the last day of the year in which the tax was recovered or before the last day of the financial year commencing after the expiry of the previous year, as defined in clause (II) of section 2, in which the income arose on which the tax was recovered, whichever period may expire later :

Provided that a claim to refund under section 49 may be admitted after the period of limitation herein prescribed, when the applicant satisfies the Commissioner, or an Assistant Commissioner of Income-tax specially empowered in this behalf by the Central Board of Revenue, that he had sufficient cause for not making the claim within such period.

**Appeal against refusal of refund.**

**50A.** (1) Any person objecting to a refusal of an Income-tax Officer to allow a claim to a refund under section 48 or 48A or 49 or to the amount of the refund made in any such case, may appeal to the Assistant Commissioner.

(2) The appeal shall be presented within thirty days of the date on which the refusal of the refund or the amount of the refund allowed was communicated to the appellant.

(3) The appeal shall be made in the prescribed form and shall be verified in the prescribed manner.

(4) The Assistant Commissioner may, after giving the appellant an opportunity of being heard, pass such orders as he thinks fit.

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## CHAPTER VIII

## OFFENCES AND PENALTIES

**Failure to make payments or deliver returns or statements or allow inspection.**

51. If a person fails without reasonable cause or excuse—
- (a) to deduct and pay any tax as required by section 18 or under sub-section (5) of section 46;
  - (b) to furnish a certificate required by sub-section (9) of section 18 or by section 20 to be furnished;
  - (c) to furnish in due time any of the returns mentioned in section 19A, section 20A, section 21, section 22, or section 38;
  - (d) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (4) of section 22, such accounts and documents as are referred to in the notice;
  - (e) to grant inspection or allow copies to be taken in accordance with the provisions of section 39;

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

**False statement in declaration.**

52. If a person makes a statement in a verification mentioned in section 19A or section 20A or section 22 or sub-section (2) of section 26A or sub-section (3) of section 30 or sub-section (2) of section 32 or sub-section (2) of section 33A or sub-section (3) of section 50A, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be deemed to have committed the offence described in section 177 of the Indian Penal Code.

**Prosecution to be at instance of Assistant Commissioner.**

53. (1) A person shall not be proceeded against for an offence under section 51 or section 52 except at the instance of the Assistant Commissioner.

(2) The Assistant Commissioner may stay any such proceeding or compound any such offence.

**Disclosure of information by a public servant.**

54. (1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of

any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof.

(2) If a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine:

Provided that nothing in the section shall apply to the disclosure—

- (a) of any such particulars for the purposes of a prosecution under the Indian Penal Code in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution under this Act, or
- (b) of any such particulars to any person acting in the execution of this Act where it is necessary to disclose the same to him for the purposes of this Act, or
- (c) of any such particulars occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand, or
- (cc) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, 1899, to impound an insufficiently stamped document, or
- (d) of such facts, to an authorised officer of the United Kingdom, as may be necessary to enable relief to be given under section 27 of the Finance Act, 1920, or a refund to be given under section 49 of this Act:

Provided further that nothing in this section shall apply to the production by a public servant before a Court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under section 26A, or to the giving of evidence by a public servant in respect thereof:

Provided further that no prosecution shall be instituted under this section except with the previous sanction of the Commissioner.



## CHAPTER IX

## SUPER-TAX

**Charge of super-tax.**

55. In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous year of any individual, Hindu undivided family, company, unregistered firm or other association of individuals, not being a registered firm, an additional duty of income-tax (in this Act referred to as super-tax) at the rate or rates laid down for that year by Act of the Central Legislature :

Provided that, where the profits and gains of an unregistered firm have been assessed to super-tax, super-tax shall not be payable by an individual having a share in the firm in respect of the amount of such profits and gains which is proportionate to his share.

**Total income for purposes of super-tax.**

56. Subject to the provisions of this Chapter, the total income of any individual, Hindu undivided family, company, unregistered firm or other association of individuals shall, for the purposes of super-tax, be the total income as assessed for the purposes of income-tax, and where an assessment of total income has become final and conclusive for the purposes of income-tax for any year, the assessment shall also be final and conclusive for the purposes of super-tax for the same year.

**Non-resident partners and shareholders.**

57. (1) In the case of any person residing out of British India who is a member of a registered firm, and whose share of the profits from such firm is liable to super-tax, the remaining members of such firm who are resident in British India shall be jointly and severally liable to pay the super-tax due from the non-resident member in respect of such share.

(2) Where any person pays any tax under the provisions of this section on account of another person who is residing out of British India, credit shall be given therefor in determining the amount of the tax to be payable by any agent of such non-resident person under the provisions of sections 42 and 43.

**Application of Act to super-tax.**

58. (1) All the provisions of this Act, relating to the charge, assessment, collection and recovery of income-tax except those contained in section 3, the proviso to sub-section (1) of section 7, the second and third provisos to section 8, sub-section (2) of section 14, and sections 15, 17, 19, 20, 21, 48, 58F and sub-sections (2) and (3) of section 58G shall apply, so far as may be, to the charge, assessment, collection and recovery of super-tax.

(2) Save as provided in sub-section (3A), (3B), (3C) and (3D) of section 18, section 57 and section 58H super-tax shall be payable by the assessee direct.

## CHAPTER IXA

### SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF PROVIDENT FUNDS

#### Definitions.

**58A.** In this Chapter, unless there is anything repugnant in the subject or context,—

- (a) a “ recognised provident fund ” means a provident fund which has been and continues to be recognised by the Commissioner, in accordance with the provisions of this Chapter;
- (b) an “ employer ” means—
  - (i) a Hindu undivided family, company, firm or other association of individuals or persons, or
  - (ii) an individual engaged in a business, profession or vocation whereof the profits and gains are assessable to income-tax under section 10 or section 11, maintaining a provident fund for the benefit of his or its employees;
- (c) an “ employee ” means an employee participating in a provident fund, but does not include a personal or domestic servant;
- (d) a “ contribution ” means any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own monies, to the individual account of an employee, but does not include any sum credited as interest;
- (e) the “ balance to the credit ” of an employee means the total amount to the credit of his individual account in a provident fund at any time;
- (f) the “ annual accretion ” to the balance to the credit of an employee means the increase to such balance in any year, arising from contributions and interest;
- (g) the “ accumulated balance due ” to an employee means the balance to his credit, or such portion thereof as may be claimable by him under the regulations of the fund, on the day he ceases to be an employee of the employer maintaining the fund; and
- (h) the “ regulations of a fund ” means the special body of regulations governing the constitution and administration of a particular provident fund.

**The according and withdrawal of recognition.**

**58B.** (1) The Commissioner of Income-tax may accord recognition to any provident fund which, in his opinion, satisfies the conditions prescribed in section 58C and the rules made thereunder, and may, at any time, withdraw such recognition if, in his opinion, the provident fund contravenes any of those conditions.

(2) The Central Government may, at its discretion, direct the Commissioner of Income-tax to refuse to accord recognition to any provident fund, or may, at any time, withdraw recognition from any recognised provident fund.

(3) An order according recognition shall take effect on such date as the Commissioner may fix in accordance with any rules the Central Board of Revenue may make in this behalf, such date not being later than the last day of the financial year in which the order is made.

(4) An order withdrawing recognition shall take effect from the day on which it is made.

(5) An employer objecting to an order of the Commissioner refusing to recognise a provident fund may appeal, within sixty days of such order, to the Central Board of Revenue.

The appeal shall be in the form and shall be verified in the manner prescribed by the Central Board of Revenue.

**Conditions to be satisfied by a recognised provident fund.**

**58C.** (1) In order that a provident fund may receive and retain recognition, it shall satisfy the conditions set out below and any other conditions which the Central Government may, by rule, prescribe—

- (a) All employees shall be employed in India, or shall be employed by an employer whose principal place of business is in British India.
- (b) The contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year, and credited to the employee's individual account in the fund.
- (c) Subject to the provisions of section 58D, the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employee's individual account at intervals not exceeding one year.
- (d) The fund shall consist of contributions as above specified, of accumulations thereof, and of interest (simple and compound), credited in respect of such contributions and accumulations, and of securities purchased therewith, and of no other sums.

- (e) The fund shall be vested in two or more trustees or in the Official Trustee under a trust which shall not be revocable save with the consent of all the beneficiaries.
- (f) The employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill-health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund.

In such cases the recoveries made by the employer shall be limited to the contributions made by him to the individual account of the employee, and to interest (simple and compound) credited in respect of such contributions and accumulations thereof, in accordance with the regulations of the fund.

- (g) The accumulated balance due to an employee shall be payable on the day he ceases to be an employee of the employer maintaining the fund.
- (h) Save as provided in clause (g), or in accordance with such conditions and restrictions as the Central Government may, by rules, prescribe, no portion of the balance to the credit of an employee shall be payable to him.

(2) Where there is a repugnance between any regulation of a recognised provident fund and any provision of this Chapter or of the rules made thereunder, the regulation shall, to the extent of the repugnance, be of no effect.

The Commissioner may, at any time, require that such repugnance shall be removed from the regulations of the fund.

**Power to relax restrictions of employer's contributions in certain cases.**

**58D.** Subject to any rules which the Central Government may make in this behalf, the Commissioner may, in respect of any particular fund, relax the provisions of condition (c) of sub-section (1) of section 58C—

- (a) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salary does not exceed five hundred rupees per mensem; and
- (b) so as to permit the crediting by employers to the individual accounts of employees of periodical bonuses or other contributions of a contingent nature, where the calculation and payment of such bonuses or other contributions is provided for on definite principles by the regulations of the fund.

**Annual accretion deemed to be income received.**

**58E.** The annual accretion in any year to the balance at the credit of an employee participating in a recognised provident fund shall be deemed to have been received by him in that year and shall be included in his total income for that year, and, subject to the exemptions specified in section 58F, shall be liable to income-tax and super-tax:

Provided that, for the purpose of sub-section (3) of section 15, out of such annual accretion only the employee's own contributions shall be included in his total income.

**Exemption of annual accretion from income-tax.**

**58F.** (1) An employee shall not be liable to pay income-tax on contributions to his individual account in a recognised provident fund, in so far as the aggregate of such contributions in any year does not exceed one-sixth of his salary in that year.

(2) In the accounts of a recognised provident fund, the contributions exempted from income-tax under sub-section (1) and accumulations thereof shall be shown separately, and interest thereon shall be calculated and shown separately. Such interest shall be exempt from payment of income-tax, in so far as it is allowed at a rate not exceeding such rate as the Central Government may, by modification in the Official Gazette, fix in this behalf.

**Exemption of accumulated balance from income-tax and super-tax.**

**58G.** (1) Where the accumulated balance due to an employee participating in a recognised provident fund becomes payable, such accumulated balance shall be exempt from payment of super-tax except to the extent of an amount equal to the aggregate of the amounts of super-tax on annual accretions that would have been payable under section 58E up to the first day of April, 1933, if the Indian Income-tax (Second Amendment) Act, 1933, had come into force on the 15th March, 1930.

(2) Where an employee participating in a recognised provident fund has rendered continuous service with his employer for a period of not less than five years, and the accumulated balance due to him becomes payable, such accumulated balance shall be exempt from payment of income-tax and shall be excluded from the computation of his total income:

Provided that the Commissioner of Income-tax may allow such exemption and exclusion where the employee has rendered continuous service with the employer for a period of less than five years, if, in his opinion, the service has been terminated by reason of the employee's ill-health, or by the contraction or discontinuance of the employer's business, or other cause beyond the control of the employee.

(3) Where exemption from payment of income-tax is not allowed under the provisions of sub-section (2) the Income-tax Officer shall calculate the total of the various sums of income-tax

from the payment of which the contributions and interest credited to the employee's individual account have been exempted under the provisions of sub-sections (1) and (2) of section 53F, and such total shall be payable by the employee, in addition to any other income-tax for which he may be liable for the year in which the accumulated balance due to him becomes payable.

**Deduction at source of Income-tax payable on accumulated balances due.**

**58H.** The trustees of a recognised provident fund, or other person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall, at the time an accumulated balance due to an employee is paid, deduct therefrom any income-tax payable under sub-section (3) of section 58G and any income-tax and super-tax payable on an employee's total income as determined under sub-section (3) of section 58J, and sub-sections (4) to (9) of section 18 shall apply as if the sum to be deducted were income-tax payable under the head "Salaries."

**Accounts of recognised provident funds.**

**58I.** (1) The accounts of a recognised provident fund shall be maintained by the trustees of the fund and shall be in such form and for such periods, and shall contain such particulars as the Central Board of Revenue may prescribe.

(2) The accounts shall be open to inspection at all reasonable times by Income-tax authorities, and the trustees shall furnish to the Income-tax Officer such abstracts thereof as the Central Board of Revenue may prescribe.

**Treatment of balances in newly recognised provident funds.**

**58J.** (1) Where recognition is accorded to a provident fund with existing balances, an account shall be made of the fund up to the day before the day on which the recognition takes effect, showing the balance to the credit of each employee on such day, and containing such further particulars as the Central Board of Revenue may prescribe.

(2) The account shall also show in respect of the balance to the credit of each employee the amount thereof which is to be transferred to that employee's account in the recognised provident fund, and such amount (hereinafter called his transferred balance) shall be shown as the balance to his credit in the recognised provident fund on the date on which the recognition of the fund takes effect, and sub-sections (3) and (4) shall apply thereto.

Any portion of the balance to the credit of an employee in the existing fund which is not transferred to the recognised fund shall be excluded from the accounts of the recognised fund and shall be liable to income-tax and super-tax in accordance with the provisions of this Act other than this Chapter.

(3) Subject to such rules as the Central Board of Revenue may make in this behalf, the Income-tax Officer shall make a calculation of the aggregate of all sums comprised in a transferred balance which would have been liable to income-tax if this Chapter had been in force from the date of the institution of the fund, without regard to any tax which may have been paid on any such sum, and such aggregate (if any) shall be deemed to be income received by the employee in the year in which the recognition of the fund takes effect, and shall be included in the employee's total income for that year; and, for the purposes of assessment, the remainder of the transferred balance shall be disregarded, but no other exemption or relief, by way of refund or otherwise, shall be granted in respect of any sum comprised in such transferred balance:

Provided that, in cases of serious accounting difficulty, the Commissioner shall have power, subject to the said rules, to make a summary calculation of such aggregate.

(4) Notwithstanding anything contained in condition (h) of sub-section (1) of section 58C, an employee, in order to enable him to pay the amount of tax assessed on his total income as determined under sub-section (3), shall be entitled to withdraw from the balance to his credit in the recognised provident fund a sum not exceeding the difference between such amount and the amount to which he would have been assessed if the transferred balance had not been included in his total income.

(5) Nothing in this section shall affect the rights of the persons administering an unrecognised provident fund or dealing with it, or with the balance to the credit of any individual employee, before recognition is accorded, in any manner which may be lawful.

#### **Treatment of fund transferred by employer to trustee.**

**58K.** (1) Where an employer who maintains a provident fund (whether recognised or not) for the benefit of his employees and has not transferred the fund or any portion of it, transfers such fund or portion to trustees in trust for the employees participating in the fund, the amount so transferred shall be deemed to be of the nature of capital expenditure.

(2) When an employee participating in such fund is paid the accumulated balance due to him therefrom, any portion of such balance as represents his share in the amount so transferred to the trustee (without addition of interest, and exclusive of the employee's contributions and interest thereon) shall be deemed to be an expenditure by the employer within the meaning of clause (ix) of sub-section (2) of section 10, incurred in the year in which the accumulated balance due to the employee is paid.

#### **Provisions relating to rules.**

**58L.** (1) All rules made under this Chapter shall be subject to the provisions of sub-sections (4) and (5) of section 59.

(2) In addition to any power conferred by this Chapter, the Central Government may make rules—

- (a) prescribing the statements and other information to be submitted with an application for recognition;
- (b) limiting the contributions to a recognised provident fund by employees of a company who are shareholders in the company;
- (c) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in a recognised provident fund;
- (d) determining the extent to and the manner in which exemption from payment of income-tax and super-tax may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn; and
- (e) generally, to carry out the purposes of this Chapter and to secure such further control over the recognition of provident funds and the administration of recognised provident funds as it may deem requisite.

#### **Application of this Chapter.**

58M. This Chapter shall not apply to any provident fund to which the Provident Funds Act, 1925, applies.

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## CHAPTER X

### MISCELLANEOUS

#### **Power to make rules.**

59. (1) The Central Board of Revenue may, subject to the control of the Central Government, make rules for carrying out the purposes of this Act and for the ascertainment and determination of any class of income. Such rules may be made for the whole of British India or for such part thereof as may be specified.

(2) Without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe the manner in which, and the procedure by which, the income, profits and gains shall be arrived at in the case of—
  - (i) incomes derived in part from agriculture and in part from business;
  - (ii) insurance companies;
  - (iii) persons residing out of British India;



- (b) prescribe the procedure to be followed on applications for refunds;
- (c) provide for such arrangements with His Majesty's Government as may be necessary to enable the appropriate relief to be granted under section 27 of the Finance Act, 1920, or under section 49 of this Act;
- (d) prescribe the year which, for the purpose of relief under section 49, is to be taken as corresponding to the year of assessment for the purposes of section 27 of the Finance Act, 1920; and
- (e) provide for any matter which by this Act is to be prescribed.

(3) In cases coming under clause (a) of sub-section (2), where the income, profits and gains liable to tax cannot be definitely ascertained, or can be ascertained only with an amount of trouble and expense to the assessee which, in the opinion of the Central Board of Revenue, is unreasonable, the rules made under that sub-section may—

- (a) prescribe methods by which an estimate of such income, profits and gains may be made, and
- (b) in cases coming under sub-clause (i) of clause (a) of sub-section (2), prescribe the proportion of the income which shall be deemed to be income, profits and gains liable to tax;

and an assessment based on such estimate or proportion shall be deemed to be duly made in accordance with the provisions of this Act.

(4) The power to make rules conferred by this section shall, except on the first occasion of the exercise thereof, be subject to the condition of previous publication.

(5) Rules made under this section shall be published in the Official Gazette, and shall thereupon have effect as if enacted in this Act.

#### **Power to make exemptions, etc.**

60. (1) The Central Government may, by notification in the Official Gazette, make an exemption, reduction in rate or other modification, in respect of income-tax in favour of any class of income, or in regard to the whole or any part of the income of any class of persons.

(2) Where, by reason of any portion of an assessee's salary being paid in arrears or in advance, or by reasons of his having received in any one financial year salary for more than twelve months, his income is assessed at a rate higher than that at which it would otherwise have been assessed, the Central Government may grant such relief as it may think fit.

**Appearance by authorised representative.**

61. Any assessee, who is entitled or required to attend before any Income-tax authority in connection with any proceeding under this Act, may attend either in person or by any person authorised by him in writing in this behalf.

**Receipts to be given.**

62. A receipt shall be given for any money paid or recovered under this Act.

**Service of notices.**

63. (1) A notice or requisition under this Act may be served on the person therein named either by post or, as if it were a summons issued by a Court, under the Code of Civil Procedure, 1908.

(2) Any such notice or requisition may, in the case of a firm or a Hindu undivided family, be addressed to any member of the firm or to the manager, or any adult male member of the family and, in the case of any other association of individuals, be addressed to the principal officer thereof.

**Place of assessment.**

64. (1) Where an assessee carries on business at any place, he shall be assessed by the Income-tax Officer of the area in which that place is situate or, where the business is carried on in more places than one, by the Income-tax Officer of the area in which his principal place of business is situate.

(2) In all other cases, an assessee shall be assessed by the Income-tax Officer of the area in which he resides.

(3) Where any question arises under this section as to the place of assessment, such question shall be determined by the Commissioner, or, where the question is between places in more provinces than one, by the Commissioners concerned, or, if they are not in agreement, by the Central Board of Revenue:

Provided that, before any such question is determined, the assessee shall have had an opportunity of representing his views.

(4) Notwithstanding anything contained in this section, every Income-tax Officer shall have all the powers conferred by or under this Act on an Income-tax Officer in respect of any income, profits or gains accruing, or arising or received within the area for which he is appointed.

**Indemnity.**

65. Every person deducting, retaining or paying any tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for the deduction, retention or payment thereof.

**Statement of case by Commissioner to High Court.**

66. (1) If, in the course of any assessment under this Act or any proceeding in connection therewith other than a proceeding under Chapter VIII, a question of law arises, the Commissioner may, either on his own motion or on reference from any Income-tax authority subordinate to him, draw up a statement of the case and refer it with his own opinion thereon to the High Court.

(2) Within sixty days of the date on which he is served with notice of an order under section 31 or section 32 or of an order under section 33 enhancing an assessment or otherwise prejudicial to him or of a decision by a Board of Referees under section 33A the assessee in respect of whom the order or decision was passed may, by application accompanied by a fee of one hundred rupees or such lesser sum as may be prescribed, require the Commissioner to refer to the High Court any question of law arising out of such order or decision and the Commissioner shall, within sixty days of the receipt of such application, draw up a statement of the case and refer it with his own opinion thereon to the High Court:

Provided that a reference shall lie from an order under section 33 only on a question of law arising out of that order itself, and not on a question of law arising out of a previous order under section 31 or section 32, revised by the order under section 33:

Provided further that, if, in exercise of his power of revision under section 33, the Commissioner decides the question, or if the Commissioner rejects the application on the ground that it is time-barred or otherwise incompetent, or if, in exercise of his powers under sub-section (3), the Commissioner refuses to state the case, the assessee may within thirty days from the date on which he receives notice of the order passed by the Commissioner withdraw his application, and if he does so, the fee paid shall be refunded.

(3) If, on any application being made under sub-section (2), the Commissioner refuses to state the case on the ground that no question of law arises, the assessee may within six months from the date on which he is served with notice of the refusal apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Commissioner's decision, may require the Commissioner to state the case and to refer it, and, on receipt of any such requisition, the Commissioner shall state and refer the case accordingly.

(3A) If, on any application being made under sub-section (2), the Commissioner rejects it on the ground that it is time-barred, the assessee may, within two months from the date on which he is served with notice of the order of the Commissioner, apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Commissioner's decision, may require the Commissioner to treat the application as made within the time allowed under sub-section (2).

(4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Commissioner by whom it was stated to make such additions thereto or alterations therein as the Court may direct in that behalf.

(5) The High Court upon the hearing of any such case shall decide the questions of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Commissioner by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Commissioner shall dispose of the case accordingly, or, if the case arose on a reference from any Income-tax authority subordinate to him, shall forward a copy of such judgment to such authority who shall dispose of the case conformably to such judgment.

(6) Where a reference is made to the High Court on the application of an assessee, the costs shall be in the discretion of the Court.

(7) Notwithstanding that a reference has been made under this section to the High Court, income-tax shall be payable in accordance with the assessment made in the case:

Provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow.

(7A) Section 5 of the Indian Limitation Act, 1908, shall apply to an application to the High Court by an assessee under sub-section (3) or sub-section (3A).

(8) For the purposes of this section "the High Court" means—

- (a) in relation to the North-West Frontier Province and British Baluchistan, the High Court of Judicature at Lahore;
- (b) in relation to the province of Ajmer-Merwara, the High Court of Judicature at Allahabad; and
- (c) in relation to the province of Coorg, the High Court of Judicature at Madras.

**References to be heard by Benches of High Courts, and appeal to lie in certain cases to Privy Council.**

**66A.** (1) When any case has been referred to the High Court under section 66, it shall be heard by a Bench of not less than two Judges of the High Court, and in respect of such case the provisions of section 98 of the Code of Civil Procedure, 1908, shall, so far as may be, apply notwithstanding anything contained in the Letters Patent of any High Court established by Letters Patent or in any other law for the time being in force.

(2) An appeal shall lie to His Majesty in Council from any judgment of the High Court delivered on a reference made under

section 66 in any case which the High Court certifies to be a fit one for appeal to His Majesty in Council.

(3) The provisions of the Code of Civil Procedure, 1908, relating to appeals to His Majesty in Council shall, so far as may be, apply in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court:

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (5) or sub-section (7) of section 66:

Provided further that the High Court may, on petition made for the execution of the order of His Majesty in Council in respect of any costs awarded thereby, transmit the order for execution to any Court subordinate to the High Court.

(4) Where the judgment of the High Court is varied or reversed in appeal under this section, effect shall be given to the order of His Majesty in Council in the manner provided in sub-sections (5) and (7) of section 66 in the case of a judgment of the High Court.

(5) Nothing in this section shall be deemed—

- (a) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or
- (b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee.

#### **Bar of suits in Civil Court.**

67. No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any Officer of the Crown for anything in good faith done or intended to be done under this Act.

#### **Computation of periods of limitation.**

67A. In computing the period of limitation prescribed for an appeal under this Act or for an application under section 66, the day on which the order complained of was made, and the time requisite for obtaining a copy of such order, shall be excluded.

## APPENDIX B

The assessee to remember the following provisions:—

(1) A company is bound to submit a Return by 15th June every year. Section 22(1)

(2) None else is bound to submit any Return unless the I.T.O. has served a notice and a form. Section 22(2)

(3) I.T.O. can ask for accounts and documents to be produced. Section 22(4)

(4) Where I.T.O. thinks that the Return submitted is incomplete or incorrect, he shall serve a notice requiring attendance or production of evidence in support of his Return. Section 23(2)

(5) Where notice and form served (generally notices under section 22(4) and 23(2) are served together) but

(a) no Return is submitted, or (b) fails to produce accounts and documents, I.T.O. shall make a reasonable assessment. Section 23(4)

(6) A victim of section 23(4) can only pray for cancellation of assessment by showing sufficient cause. Section 27

(7) If I.T.O. refuses to cancel and to make a fresh assessment, assessee can appeal to Assistant Commissioner against order passed under section 27, only as regards the propriety of assessment under section 23(4) or his refusal to consider the circumstances under which the assessee might have been prevented from complying with I.T.O.'s requisitions. Section 30

(8) Therefore every person when called upon to make a Return should submit a valid Return, then produce evidence to Income-tax Officer, if necessary, and then appeal to the Assistant Commissioner.

(9) Notice under section 22(4) can be issued immediately after the notice under section 22(2) has been served but cannot complete the assessment until the date of filing the Return has expired.

(10) No appeal lies against the assessment made under section 23(4); only indirectly through sections 27 and 30 appeal possible.

### APPEAL

(11) Appeal is to be presented within 30 days of the receipt of the notice of demand or of the date of refusal to make a fresh assessment (form in Rule 21).

(12) There is no second appeal against Assistant Commissioner's decision.

(13) But in two cases, *viz.*, when Assistant Commissioner himself imposes a penalty or enhances an assessment, an appeal may be made to the Commissioner (Section 32).

(14) Assessee may apply any time (though by executive orders, Commissioners have been forbidden to revise a case after the lapse of one year from the date of the order of the subordinate authority) to the Commissioner for revision of any proceedings (Section 33)

but if the assessee thinks that the matter may have to be referred to High Court, he should apply to the Commissioner within 60 days of the service of the notice of the appellate order, for, in that case, he can add a prayer for reference to High Court.

(15) On an application to Commissioner for a reference to High Court, if the Commissioner refuses, the assessee can, within 6 months of the refusal, apply to High Court to call upon the Commissioner to state the case and refer it to the said court.

## STAMPS AND COURT-FEES

(16) Affidavit must be stamped.

(17) Letter of Authority which is merely a bare letter of authorisation empowering a person to appear on behalf of the assessee, is not to be stamped.

(18) Letter of Authority which constitutes a "power of attorney" must be stamped.

(19) Copies or extracts will be charged with stamp-duty provided they are not chargeable to court-fees.

(20) Wakalatnama or Mukhtarnama for conducting a case before the Income-tax Authorities is to be charged with court-fees.

(21) Petition presented to any executive officer of the Income-tax Department for the purpose of obtaining a copy of any order passed or any other document is chargeable with court-fees.

(22) Copies of orders or other proceedings of the department should bear court-fees.

(23) Memorandum of appeal presented to Income-tax Department is to be charged with court-fees.

## MISCELLANEOUS

(24) Mere forwarding particulars of depreciation will not entitle an assessee to depreciation allowance; he shall file the particulars in the prescribed form.

(25) He must remember that he is entitled to unabsorbed depreciation in future years. It is depreciation only which can be carried forward if not fully allowed in the year.

(26) Tax at the maximum rate must have been deducted on Interest on Securities and dividends and from profits of registered firm; and where the total income is below one lac rupees, refund is allowable. In claiming refund, certificates relating to income from interest on securities and dividends should be filed.

(27) Life Insurance premium exemption is up to 1/6 of Total Income.

(28) An assessee may not draw his salary due. By deferring drawing of salary, he can avoid higher rate of tax.

(29) In the case of a new business, no assessment will be made in the first year; assessment in the second year will be made on the profits of the previous year.

(30) Claim for refund must be made within one year (see pages 136, 137).

## APPENDIX C

### Suggestions.

- (1) Section 1 should be made more comprehensive.
- (2) Section 2:—
  - (a) Definition of agricultural income should be narrowed down to Agriculture, Horticulture, etc. only. Broad outlines of exemptions have been suggested. (Page 24).
- (3) (b) There should be no exemption for Tea Industry. (Page 23).
- (4) (c) Agricultural income may be taxed by provincial governments where the total income from rentals exceeds Rs. 75,000 or Rs. 100,000. (Page 22).
- (5) (d) Question of taxing Forest income should again be seriously considered. (Page 23).
- (6) Section 3:—
  - (a) Slab system, as recommended in the Experts' Report, should not be adopted. (Page 34).
- (7) (b) Exemption of first 1500/- (as a part of the slab system recommended in the Experts' Report) should be accepted. (Page 33).
- (8) (c) Reduce the steepness of the rates and create more intermediate stages of income. In such a case marginal relief may not be needed. (Page 34).
- (9) (d) Some statutory concessions be given to audited accounts; it will pay the State in the long run. (Page 35).
- (10) (e) Profits from current year's income or previous accumulations declared and paid in any form (cash, share or debenture) should be deemed as dividends received by shareholders. (Pages 33, 93).
- (11) Section 4:—
  - (a) Any payment from the British Indian Exchequer received by any person in any part of the world should be taxed as it is earned in British India.
- (12) (b) "Whole Income" basis as recommended in the Experts' Report should not be accepted. The present basis together with "Remittance" provision is reasonable and satisfactory. But the term "accrue" should be so defined as to include every item of direct and indirect accrual. (Page 37).



*Illustration:—*

A Maharaja having estate in British India takes a loan of rupees five crores in England on the security of his estate in British India agreeing to pay the interest in England. In this case, the interest is not liable to Indian Income-tax as it is considered not to have accrued in British India though the estates are in British India. As this mortgage is an essential condition of the transaction, interest payable in England should be regarded as income earned in British India.

- (13) (c) If dividend is declared by a rupee company out of its profits but the dividends are paid out in U.K. from the income of the company's sterling investments (which income has not been brought into British India and where the company is not assessed to the tax on that portion of the company's investments) then will not the company's income from foreign investments to the extent of the amount of such dividend be deemed to have been brought into British India and be taxable under section 4(2)?
- (14) (d) Every Individual, Firm or Company carrying on business in India and having sterling securities in U.K. should furnish to the I.T. authorities every year by 15th June, the amount of money remitted from outside British India and received in British India within the previous year; and should specify what portion represents income and what portion capital.
- (15) (e) Where any company (sterling or rupee) carrying on business in British India *invests its Indian income*, profits or gains in foreign investments, income from such foreign investments should be taxed.
- (16) (f) Commercial undertakings of local authority should be taxed.
- (17) Section 12:—
- (a) A Tea Company, an assessee as such, is taxed on 40% of its profits.

- (b) but when a shareholder is assessed as an individual, the dividend received must be taxed on the full 100% (no matter whether it is tea or coal or sugar dividend) for the dividend is taxable under section 12.

If the Concession enjoyed by the source (*e.g.*, Tea Company) continues to be enjoyed by everybody in receipt of money from that source, then an absurd position may arise, *e.g.*, University being exempt from tax, all teachers getting salary from the exempted earnings of the university should, according to the above, enjoy exemption. In short, concession granted to a tea company under section 2, cannot be extended to its shareholders who must be assessed under section 12.

## (18) Section 14:—

This section should be so redrafted that a case like Hungerford Investment Co. may not be repeated. (Page 76). The previous point has also to be borne in mind.

## (19) Section 23(4):—

The calling for books of accounts under section 22(4), before assessing under section 23(4), should not be left to the option of the I.T.O.; the I.T.O. should be *required*, when assessment under section 23(4) is going to be made, to give a notice again to the defaulter assessee to produce accounts on the basis of which assessment should be made, if accounts would be available even so late as at that time. This provision in favour of the assessee is necessary.

## (20) Section 23A:—

All loopholes should be removed so that a case like David Yule's Estate may not be repeated. (Page 92).

## (21) Section 26:—

Should be more precise in view of High Court decisions. (Page 100).

## (22) Section 34:—

Should be much more precise. Power of I.T.O. should be restricted. Assessment once made should be final, except for rectification of an arithmetical error and not rectification or application of any principle. Frivolous re-opening of a case by I.T.O. should be strictly prohibited. (Page 112).

## (23) Section 42:— (Pages 124, 125).

(a) All non-resident and foreign companies be treated alike for taxation purposes.

(24) (b) Trading *in* and *with* be defined in the *Act*.

(25) (c) Tests be provided in the *Act* to find out definitely whether agency exists or not.

(26) (d) Business done in any country outside British India through an agent in India should be regarded as business done *in* India and be assessed. Section 42 should be so amended as to include and render taxable any profits wherever arising from business done *in* or *with* India.

(27) Section 49 be entirely removed from the *Act*. (Pages 135, 136).

## (28) Section 58A, etc.:—

These are unnecessarily complicated provisions and are of doubtful advantages in many cases. With a few safeguards, such funds may be allowed to come under the *Act* of 1925. (Page 140).

- (29) Section 60:— (Pages 147, 151).  
 Instructions relating to the assessment of Cooperative Society are not at all clear or complete. The main act (not instructions merely) should provide for it. The Society should be a separate subject under the charging section 3. *Society* as assessee and *shareholder* as assessee should be clearly dealt with
- (30) Hindu Undivided Family:—(Pages 159, 160).  
 (a) How can an absolute transfer to wife be included in husband's assessment?  
 (b) "Benami" transaction is taxed but deliberate conversion of income into capital cannot be; as if, the first transaction (which is done in many cases for purposes other than evading taxation) is a greater offence than a clear case of evasion of taxation by conversion.
- (31) (c) The suggestion in the Experts' Report of assessing H.U.F. on 50% after aggregating the family income and the income of all the members is wholly unacceptable.
- (32) Life Insurance Companies:— (Pages 167, 173).  
 (a) If after a triennial valuation, the Company adopts a quinquennial valuation, how to assess in the fourth year?  
 (b) Rules 25 to 35 are a machinery to find out the assessable profits. Once found out, why the profit should not be fixed against each year of the averaged years? Otherwise, first few years go unassessed and the defect in (a) above remains.
- (34) Indian States and Ruling Princes both should be liable to income-tax and super-tax in respect of interest on securities. (Page 54).
- (35) Pensions to officers of Government residing out of India and pensions to other employees residing out of India should be assessed to tax. (Page 145).
- (36) Leave allowance or salary paid to officers of Government or of private employers when they are on leave or on duty in U.K. should be assessed to tax. (Page 145).
- (37) Though High Court decisions clearly forbid whimsical assessment purporting to punish the assessee under the protection of section 23(4) for his non-compliance with I.T.O.'s requisitions, still, assessments from time to time clearly indicate that a strong inclination to punish such an assessee does persist in the minds of the Income-tax authorities. It is a regret that the department does not fully realise the difficulties of an average businessman of to-day. A sympathetic wider outlook is a remedy. The other remedy is a provision for appeal.

- (38) A tendency to overassess has become the general practice. This is regarded by the I.T.O. as erring on the right-side for (1) the I.T.O. feels free to overassess without any sense of restraint or restriction, (2) impossible amount of highly responsible work thrust upon the Inspectors, Examiners and Officers can give them absolutely no time to think for themselves or to study judgments; speed and larger revenue have become much more important than judicial disposal of cases. The result is overassessment. Apart from usual trouble and waste of time, overassessment means 3 to 4 months of additional harassment, botheration and financial loss in connection with appeals, etc., and means an equally serious hardship, *viz.*, depositing a large sum of money prior to lodgment of appeal. If the Income-tax Authorities only keep in mind that businessmen have to do *business* and not to waste time and money in *fighting an over-assessment*, a wider outlook can be secured towards Indian business. The remedy lies more in changing the attitude of the department towards its assesseees than changing the words of the law. The other equally important remedy lies not in increasing higher posts but in increasing the posts of Income-tax Examiners and Officers.
-

## APPENDIX D

### Rates of Income-tax.

| A. In the case of every individual, Hindu undivided family, unregistered firm and other association of individuals not being a registered firm or a company | Rate per rupee. |
|---|-----------------|
| (1) When the total income is less than Rs. 2,000 ... ..   | nil.            |
| (2) When the total income is Rs. 2,000 or upwards, but is less than Rs. 5,000 ... ..  | 6 pies.         |
| (3) When the total income is Rs. 5,000 or upwards, but is less than Rs. 10,000 ... ..   | 9 pies.         |
| (4) When the total income is Rs. 10,000 or upwards, but is less than Rs. 15,000 ... ..  | 12 pies.        |
| (5) When the total income is Rs. 15,000 or upwards, but is less than Rs. 20,000 ... ..  | 16 pies.        |
| (6) When the total income is Rs. 20,000 or upwards, but is less than Rs. 30,000 ... ..  | 19 pies.        |
| (7) When the total income is Rs. 30,000 or upwards, but is less than Rs. 40,000 ... ..  | 23 pies.        |
| (8) When the total income is Rs. 40,000 or upwards, but is less than Rs. 1,00,000 ... ..  | 25 pies.        |
| (9) When the total income is Rs. 1,00,000 or upwards. ... ..  | 26 pies.        |
| B In the case of every company and registered firm, whatever its total income.  | 26 pies.        |
| Surcharge 1/12.   |                 |

**Super-Tax.**

Rs. 30,000 exempted in every case.

| Company<br>First Rs. 20,000 (nil)<br>Every rupee in<br>excess (1 anna) | Hindu Undivided<br>Family. First 45,000<br>(nil)<br>Next Rs. 25,000<br>(15 pies) | Individual, un-regis-<br>tered firm etc. First<br>Rs. 20,000 (9 pies)<br>Next Rs. 50,000<br>(15 pies) |
|--|--|---|
|  | 100,000  | 100,000   |

|             | Rs. | a. | p. |
|-------------|-----|----|----|
| Next 50,000 |     | 1  | 9  |
| Next 50,000 |     | 2  | 3  |
| Next 50,000 |     | 2  | 9  |
| Next 50,000 |     | 3  | 3  |
| Next 50,000 |     | 3  | 9  |
| Next 50,000 |     | 4  | 3  |
| Next 50,000 |     | 4  | 9  |
| Next 50,000 |     | 5  | 3  |
| Next 50,000 |     | 5  | 9  |

or every rupee of the remainder of such excess 6 3  
 Surchage 1/12.

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